





# REPORT

TO

HYDRO-ELECTRIC INQUIRY COMMISSION

ON

LEGISLATION AFFECTING POWER UNDERTAKINGS

OF THE

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

J. A. McANDREW, K. C.
R. LEIGHTON FOSTER

[illegible] Toronto, Ontario,

January 22nd, 1924.

W. P. Gregory, Esq.,
Chairman,
Hydro-Electric Inquiry Commission,
T o r o n t o.

Dear Sir,-

In accordance with your instructions, we have collaborated in the preparation of a review of legislation affecting the Hydro-Electric Power Commission of Ontario.

**REVIEW OF LEGISLATION**

**AFFECTING POWER UNDERTAKINGS**

**OF THE**

**HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO**



Having regard to the fact that all the sections of the several Statutes [illegible] the powers and duties of the Power Commission have not been quoted nor commented on and that [illegible] follow the order in which they appear in the Statutes. We have grouped the more important provisions of the Statutes under appropriate headings, so as to make the review more intelligible and better available for reference and consideration.

---

Yours truly,

J. A. McAndrew

E. Leighton Foster

Toronto, Ontario,
January 22nd, 1924.

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Herewith we transmit to you the Review as finally settled. It will be noticed that all the sections of the several Statutes relating to the powers and duties of the Power Commission have not been quoted nor commented on and that those which are, do not in the document follow the order in which they appear in the Statutes. We have grouped the more important provisions of the Statutes under appropriate headings, so as to make the review more intelligible and better available for reference and consideration.

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on

# LEGISLATION

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# LEGISLATION

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REVIEW OF LEGISLATION

AFFECTING POWER UNDERTAKINGS

OF THE

HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO

# SINKING FUND

A. Payment of, by Municipalities

1. Present Law

Each municipality receiving power from the Commission is required by The Power Commission Act to annually pay to the Commission as part of the cost of power its proportion of a sum sufficient to form in thirty years with interest at four per cent. per annum a sinking fund for the repayment of advances made by the Province for the purposes of the Commission.



> 23."..... the Corporation shall annually pay to the Commission its proportion ..... of ..... (b) an annual sum sufficient to form in thirty years with interest at four per cent. per annum a sinking fund for the repayment of the advances made by Ontario under this Act for the payment of the cost of the works."
> 1906,c.15,s.15; 1907,c.19,s.18; R.S.O.1914, c.39,s.23; 1918,c.14,s.11.

The Commission is authorized to relieve municipalities from payments on account of sinking fund during the first five years during which they make payments under their contracts.

> "Notwithstanding anything in The Power Commission Act contained, a municipal corporation which has entered into or shall hereafter enter into a contract with the Commission for a supply of power may be relieved by the Commission from payment of any sum on account of the sinking fund account

# FACTORS - CASES

1. Factors of a Quadratic Trinomial

1. Common Case

Many quadratic trinomials have some one common factor in together an (x-term) trinomial and in accordance with it the Quadratic is part of one area of which its factorization of a sum multiplied by one in factor first, with factors of the two but one factor, but there a single factor the expression of another view of the factors for the factors of the trinomial.

"... the factorization usually consists one of the factors is binomial ..... of ....
In an equal one multiplied in two in which
Where also involved in the fact, the when
a binomial that the factors of the minuend
made up factor that in the factors of the
the one of two means."
$x^2+5x+6$; $3x^2-x-2$; $x^2-3x-10$; $x^2+x-12$; $x^2-5x+4$.

The Quadratic is multiplied in unless equality-
then factors on account of having that having the first term
have having also that more factors equal first monomial.

The Quadratic is multiplied in unless equality-
$x^2+5x+6$; $3x^2-x-2$; $x^2-3x-10$; $x^2+x-12$; $x^2-5x+4$.
$x^2+x-12$; $x^2-5x+4$; $x^2-3x-10$; $3x^2-x-2$; $x^2+5x+6$.
the one of two means."
In an equal one multiplied in two in which
Where also involved in the fact, the when
a binomial that the factors of the minuend
made up factor that in the factors of the
the one of two means."

The Quadratic is multiplied in unless equality-
then factors on account of having that having the first term
have having also that more factors equal first monomial.

The Quadratic is multiplied in unless equality-

for the first five years, during which payments are made to the Commission by the corporation under such contract, and the amounts required from such corporation on sinking fund account shall be payable during the them next ensuing thirty years." 1916,c.19,s.12, repealed; 1917,c.20,s.13.

The Ontario Niagara Development Act, 1917, provides that "notwithstanding anything contained in any contract .... or in any general or special Act .... every municipal corporation .... under contract with the Commission for the supply of power from Niagara Falls and the vicinity .... shall pay to the Commission a sum equal to the average cost per horse-power to the Commission" and that "in fixing the amount per horse-power so payable .... the Commission shall take into account .... the amount required .... to form a sinking fund sufficient to provide for the repayment of such amounts and to provide renewals and such other charges as the Commission may deem necessary and proper". 1917,c.21,s.5. It appears that the Commission has interpreted this provision as empowering it to determine in what manner and over what period of years sinking funds to repay the cost of the works constructed or acquired under that Act shall be established.



2. Historical Sketch

The general provision with regard to the payment on account of sinking fund by the municipalities to the Commission in Section 23 was not substantially amended from the time of its original enactment in 1906 until 1918.

For the first five years, during which payments are made to the Commission by the corporation under contract, but the amounts required from each corporation to exceed that minimum which be payable during the time each operating period year.”
JAIR,v.12,n.11, February 1917,p.13,p.12.

The Canadian Finance Department (p. 1917, provides that "notwithstanding anything contained in any contract .... or in any lease or agreement and .... every municipal corporation .... under contract with the Commission for the supply of power from Niagara falls and the vicinity .... shall pay to the Commission a sum equal to the average net per horse-power for the Commission" and that "in fixing the market per horse-power to payable .... the Commission shall take into account .... the actual expense of such amounts and to provide reserve and such other charges as the Commission may from consider and deem.” JAIR,v.11,n.2, it appears that the Commission has interpreted this provision as authorizing it to determine in what manner and from what period of years starting from to spread the cost of the power constructed or acquired under this act shall be apportioned.

4. Historical Issues

The general provision with regard to the payment to Ontario of electric fees by the municipalities to the Commission in Section 22 was not substantially changed from the time of the original enactment in 1906 until 1920.

The Clause was first enacted in 1906 in the following terms:

> "An annual sum sufficient to form in thirty years a sinking fund for the retirement of the securities issued by the Province of Ontario under this Act for the payment of the cost of the works hereinbefore mentioned."
> 1906,c.18,s.15 (b).

In 1907 the Clause was reenacted with the omission of the underlined words. When the Statutes were revised in 1914, the words "by Ontario" replaced the words "by the Province". Then, in 1918, the words "with interest at four per cent. per annum" were inserted and the words "retirement of the securities issued" were replaced by the words "repayment of the advances made". The provision has not been amended since 1918.



In 1916, the original provision with regard to the deferment of sinking fund payments was enacted in the following terms:

> "Nothwithstanding anything in The Power Commission Act contained the Commission, with the approval of the Lieutenant-Governor in Council may relieve any municipal corporation which has entered into a contract with the Commission, from the payment of any sum on the sinking fund account during the first five years of such contract, and the amount required from the corporation for sinking fund shall be payable only during the remainder of the term of the contract."
> 1916,c.19,s.12.

The provision was repealed and the present section (page 1) enacted the following year. Whereas the original provision required the approval of the Lieutenant-Governor in Council to any deferment and payment in full within thirty years, the new section left the deferment of payments entirely in the hands of the Commission and allowed the municipalities thirty years after commencing annual

The Times was first founded in 1923 in the Chinese

year:

> "In spite of the difficulties to face in early years a similar fate for the publishers of the Shanghai Times issued by the Chinese of Jiaxing under the act for the payment of the rent as the union inter-
> 1923,4.12,6.12 (1).

In 1927 the Times was renamed with the Minister of the Shanghai Post. When the Jiaxing Post revised in 1929, the words "Jy Jiaxing" replaced the words "by the Jiaxing". Then, in 1930, the words "with interest at five per cent per annum" were inserted and the words "Jiaxing" were replaced by the words "representative of the Shanghai union" were replaced by the words "representative of the Shanghai union". The provision has been made Shanghai since 1921.

In 1924, the original provision with regard to the determination of minimum rent payments are mentioned in the following terms:

> "Notwithstanding anything in the lease contained the Commissioner, with the concurrence of the Landlord-Lessor in writing may reduce the rent payable when the tenant has a business with the Commission, from the payment of any rent on the existing rent because during the first five years of that tenancy, and the amount reduced from the compulsory for existing rent shall be payable only during the remainder of the term of the tenancy."
> 1924,6.12,6.12.

The provision was repealed and the present section (Sec 2) replaced the following year. Thereon the original provision replaced the approval of the Commissioner-Lessor in Council is and determine the payment in full within thirty years, the sum monies 1927 the determined of payment mainly in the hands of the landlords and claimed the municipalities thirty years after commencing tenant

payments, or, in effect, thirty-five years to provide a sufficient sinking fund.

The Ontario Niagara Development Act has not been amended since 1917 and does not specifically define the basis upon which a sinking fund shall be established for the purpose of repaying the advances of the Province to defray the cost of the works constructed or acquired under the Act. The Act, however, amends the contracts made with municipal corporations in the Niagara System and requires them to pay "the average cost per horse-power" to the Commission of power developed at Niagara Falls and its vicinity by the Commission or others, part of which "average cost" is an annual payment on account of sinking fund, and the cost must "be annually adjusted and apportioned by the Commission as provided by The Power Commission Act".



3. Comment

(a) Deferment Provisions

It appears that the Commission has adopted the uniform practice of relieving new municipalities of payments on sinking fund account during the first five years. In effect, therefore, the sinking fund period is normally thirty-five years instead of thirty years. It would seem that the intention was merely to allow some discretion to the Commission in the case of individual municipalities; and not to authorise extension of the sinking fund period from thirty to thirty-five years in every case.

purposes, or, in addition, thirty-five years to provide a drinking-water fund.

The Natural Dispute Tribunals act has not been amended since 1919 and does not specifically define the water upon which a drinking fund shall be established for the purpose of supplying the natives of the Travancore to defray the cost of the water constructed or supplied under the Act. The Act, however, commits the Residents made with municipal corporations in the Kingdom (Cochin and Travancore) to pay "the average cost per metre-power" in the Commission of power developed at Kingdom Falls and its vicinity by the Commission or others, part of which "average cost" is on account payment on account of drinking fund, and the cost must "be commonly adjusted and apportioned by the Commissioner as provided by the Inter Commission Act".

c. Causes.

(a) Increase Population

It appears that the Commission has adopted the matter practice of restricting the municipalities of Kingdom in minting fund accrued during the first five years. In effect, therefore, the minting fund period is usually thirty-five years instead of thirty years. It would even then the Commission was usually to allow some discretion to the Commission in the case of individual municipalities, and not to restrict extension of the drinking fund period from thirty to thirty-five years in every case.

If the principle of deferment in every case be accepted, it is suggested that it should have the approval of the Legislature and the present section be amended to provide for a uniform deferment of five years in the case of all newly contracting municipalities.

Attention is directed to the wording of the deferment provision. The Commission is authorized to relieve municipalities of the "payment of any sum on account of the sinking fund account for the first five years during which payments are made to the Commission by the corporation under such contract".

After the initial capital investment in the works of a system is made, extensions and additions to those works are undertaken from time to time. These extensions and additions sometimes represent a larger capital investment than that on the original works. It appears that the Commission not only defers for five years the payment of sinking fund instalments in respect of the original capital investment, but that it also defers the payment of sinking fund instalments in respect of the capital invested in additions and extensions for five years after the expenditures thereon are made. This application of the deferment provision of the Act would appear to be unwarranted in that it relieves municipalities from payment of sums on account of sinking fund in respect of these extension expenditures for longer than "the first five years during

If the principle of government is every man is equally, is it necessary that it should have the approval of the legislature and the governor vested be required to provide the a nature determined at this point in the case of all newly established communities.

Attention is drawn to the wording of the statement provided. The Commission is restricted to relative responsibilities of the "Colonies of Sir Ralph and not as regards the first five years during which Raleigh was made no the Commission by the corporation under that charter".

After the initial capital investment in the venture a venture is made, subscribers are solicited to issue shares and contributions from time to time. These subscribers and solicitors sometimes represent a larger capital investment than that on the original venture. It appears that the commission not only deals the five years the payment of original first investments in the shares of the original capital investment, but that it also deals the payment of subsequent first investments in shares at the capital investment in solicitors and subscribers the five years after the commissioner charges are made. This applicable at the national creation at the 1st early shares so be subscribed in that it original commissioners then payment of assumed the 1st early shares so be subscribed in that it original commissioners then payment of

which payments are made to the Commission by the corporation under such contract". This application of the deferment provision may be illustrated by a concrete example. Under its contract with the Commission of May 4th, 1908, the Municipal Corporation of Toronto first made payments, other than on sinking fund account, in 1910 or 1911, and on account of sinking fund in 1916. Payments on account of sinking funds to repay the advances of the Province for the cost of additions and extensions to the works, incurred in the several years subsequent to 1910, are deferred for five years following the date of the respective expenditures. Thus sinking fund payments in respect of expenditures incurred in 1922 on works serving the City of Toronto will not commence until 1928, i.e., for eighteen years and not "five years during which payments are made by the corporation under such contract". A strict compliance with the Act would seem to require the collection in 1923 of the first payment on account of sinking fund to repay the "advances made by Ontario for the payment of the cost of the works" in 1922. The deferment provision in the Act was apparently made to confirm the practice previously adopted by the Commission of relieving newly contracting municipal corporations for a five-year period in order that they might build up their power loads and thus reduce the annual charge per horse-power for power supplied to them. There does not, however, appear to be any valid reason why a municipal corporation, which has been supplied with power

a monthly subscription, which has been applied with some
there can be." Indeed, when it is not with regard the
necessary effects for future-times for power supplying in town.
that might help us their have lands and that reduce the
municipal authorities for a long-term having in order long
regard of the Government of religious mainly constructing
and was ultimately made on medium the Parliamentary
ment of the Bill." In 1920, the Government at
which the "measures made by Parliamentary of the
in 1921 of the City Engineer on measures of simple that to
conditions with the 1st month even to indicate the railways
are made by the authorities under such matters." A state
the eighteen years and the "Ziza Jones dealing using Indians
earning the City of Bombay will not commence until 1926. Ima-
ments in respect of expenditure insured in 1921 on works
data of the respective authorities. The electric land pay-
ments in 1920, are delayed for five years initiated the
ang extensions to the water." Instead in the second period sub-
of which the schemes of the Trustees for the sum of existing
electric fund in 1920. Increase on measure of existing water
on existing land measure, in 1919 of 1919, and on measure of
ding the Corporation of Private Lord made Bombay, other less
the measure -ion the Commission of Bay etc. 1920, the Impro-
Parliament are to illustrated by a concrete example. Under
made such undertake." This application of the Government
motor Bombay are made to the Commission of the authorities

for twelve years, should not commence payments on sinking fund account in respect of capital cost of extensions in the year following that in which the expenditure on such extension was made, as a strict compliance with the Act required. If the present practice of the Commission be approved, Legislative authority should be given it by amendment to the Act.

(b) Term of Contract

The standard form of contract between the municipalities and the Commission contains the following clause:

"This agreement shall remain in force for thirty years from the date of the first delivery of power under this contract."

It is quite obvious that the contracts between the municipalities and the Commission will have terminated five years before the municipalities have repaid the sums advanced by the Province for the cost of the original works serving them, and a greater number of years before the cost of subsequent additions and extensions has been repaid. The Act makes no provision for the remaining part of the cost after the contracts have expired. The contract between the City of Toronto and the Commission expires in the year 1936. The city was not required to pay sinking fund instalments in respect of the capital cost of the works until the year 1916. These instalments in order to provide a sufficient sinking fund under the Act must continue to be paid until the year 1946, or eight years after the contract has terminated. Additions and extensions have been made to the works serving the city. To meet the cost of additions and extensions

made, for instance, in the year 1921, the City of Toronto will not be required to commence sinking fund payments until the year 1927, and the last instalment will, therefore, not be payable until the year 1987, or nineteen years after the contract between the city and the Commission will have expired. Doubtless many, if not all, contracts will be renewed, but it is desirable that the Statutes clearly define the rights and duties of municipal corporations until a sufficient sinking fund has been accumulated to repay the cost of all the works serving them.

(c) Thunder Bay System

Although The Power Commission Act contemplates a thirty-year sinking fund period, subject to the provisions respecting deferment (page 1), the contracts with the municipalities on the Thunder Bay System are a notable exception to the general rule. The contracts between Fort William and Port Arthur and the Commission provide, in terms, for a forty-year sinking fund period. Inasmuch as each contract was confirmed by the Legislature (1918,c.14,s.19), the question of their validity is not open to question.



The Act not contemplating sinking fund periods exceeding thirty years, there does not appear to be any authority for deferring for a period of five years the collection from these municipalities of the first payment on account of sinking fund, which is on a forty-year basis. Even if the Act were amended to make the five-year deferment provisions uniformly applicable,

it would appear that the situation would not be sufficiently relieved. Authority should be secured by legislation, relieving the Thunder Bay municipalities from sinking fund payments until such time as the receipts from the sale of power enable them to make them without unduly increasing the annual cost of power.

(d) Essex and Thorold Systems
and Bonnechere River Storage System

These so-called systems are not "systems" as defined by The Power Commission Act. No "group of municipalities" is responsible for the capital investment and the Act does not define any method for repayment of advances, or relief from obligations assumed, by the Province, in connection with the acquisition and construction of works serving these systems. Section 23 of the Act does not apply and under no other provision of the Act is the Commission authorized or required to establish a sinking fund.



The Commission has established sinking funds in these cases. This, it is stated, has been done in accordance with sound business principles and not pursuant to any obligations imposed by the Act, and the sinking fund bases vary according to the nature of the obligations maturing in respect of each particular work.

It is suggested that the Act should be amended to require the Commission to establish sinking funds for all works and undertakings upon which monies advanced by the Province are expended or in respect of which obligations are assumed by the Province. If so established, Section 16(1) would apply and

it would appear that the situation would not be satisfactory either. Authority would be secured by legislation, relieving the Minister for constituencies from electing that payments until such time as the receipts from the sale of power results then in such payments exceeding the cost of power.

(d) Taxes and Thermal Operations

and Transmission Lines Electric Power

These so-called systems are not "systems" as defined by the Power Commission Act. An "group of municipalities" is responsible for the capital investment and the net loss or deficit and method for repayment of minutes, as relief from obligations accrued, by the Province, in connection with the negotiation and construction of works covering these systems. Section 24 of the act does not apply and under no other provisions of the act is the Commission authorized or required to operate a steam fund.

The commission has constituted electric funds in three cases. This, it is stated, has been done in consequence of it being unclear principles and not pursuant to any obligation imposed by the act, and the funding that been very essential in the nature of the obligations matching to respect of such particular work.

It is suggested that the act should be amended to require the Commission to establish sinking funds for all works and undertakings upon which monies advanced by the Province are repaid or in respect of which obligations are assumed by the Province. If so established, section 23(1) would apply and

sums received on those sinking fund accounts would be invested in securities of the Province and those securities delivered to the Provincial Treasurer.

(e) Power Generating Works at Niagara Falls and Vicinity

The situation in regard to the establishment and administration of sinking funds for repayment of advances made and obligations assumed by the Province for the works generating power for the Commission at Niagara Falls and Queenston is confusing and demands clarification by legislative enactment. Control of The Ontario Power Company was acquired by the Commission in 1917, the year in which the second Ontario Niagara Development Act was passed. Such control might have been acquired either under that Act or under The Power Commission Act of the same year. The acquisition did not require any advances by the Province. The Province, however, guaranteed the bonds of the Commission and the payment of bonds of the Company assumed by the Commission which constituted the consideration for the purchase. Section 23 of The Power Commission Act has no application and there is no provision in that Act requiring the Commission to establish a sinking fund as security for the Province in respect of the liabilities assumed by it. The purchase of the Toronto Power Company is in much the same position. If control of these companies were acquired under the provisions of The Ontario Niagara Development Act and the Commission be authorized to establish sinking funds in respect of the obligations assumed, as well as for repayment of the cost

the obligation assumed, so will be for repayment of the cost
mission be authorized to actually sinking funds in respect of
Province of the Ontario Energy Development and the Ontario
power. If control of these companies were exercised under the
the purpose of the Ontario Power company is to meet the need
for the Province in respect of the liabilities created by it.
enabling the Commission to establish a sinking fund as security
has been an application and there is no provision in that Act
adequate for the purchase. Section 22 of the Power Commission
Company assumed by the Commission which constituted the con-
the basis of the operation and the payment of debts of the
advance by the Province. The Province, however, guaranteed
the same year. The negotiation did not relieve the
equitable minor matter that was to make the Power Commission
Development Act was passed. The central night have been
Commission in 1917, and year in which the second Ontario Hydro
Energy Act, 1952, and the Ontario Power Commission Act
Funding and demands clarification by Legislative committee.
Report of the Ontario Power Company was adopted by the Commis-
and obligations assumed by the Province for the water generating
power for the development as Niagara Falls and generation in con-

## Mr Nickle Tells and Finding

The attention is turned to the establishment and
administration of sinking funds for repayment of advances made
the obligation assumed, so will be for repayment of the cost

(a) Power Generating Costs

To the Provincial Treasurer.

in relation to the Province and that necessities delivered
have received on these matters that insurance would be invested

of the Queenston-Chippawa Power Development on such bases as it may in its discretion determine, the interests of the Province do not appear to be sufficiently safeguarded. This would especially be the case if Section 15(1) of The Power Commission Act does not apply to sinking funds in respect of works constructed or acquired under The Ontario Niagara Development Act, which latter Act does not provide for investment of sums received on sinking fund account in Provincial securities and delivery of the securities to the Treasurer of the Province.

3. Investment

1. Present Law

The Commission is required to invest sinking funds in Provincial securities and deposit same with the Treasurer of Ontario as security for the repayment of advances.



> 15.(1) "All sums received by the Commission from municipal corporations and others on sinking fund account shall be invested by the Commission in securities of the Province of Ontario, and also all interest accruing thereon; and such securities shall be delivered by the Commission to the Treasurer of Ontario as security for repayment of the advances made by the Province to the Commission."
> 1918, c.14, s.7 part

2. Historical Sketch

Prior to 1918, when the present law was enacted, all sums received by the Commission in respect of sinking funds were required to be paid over directly to the Treasurer of Ontario.

of the American-Belgian Trust Corporation to such rates as it may in its absolute discretion, the interests of the province do not appear to be sufficiently safeguarded. This would apparently be the case if Section 18(1) of the Power Resolution Act does not apply to similar cases in respect of works constructed or acquired under the Industrial Development Act, which latter act does not provide for immediate or some required or statutory trust account in provincial securities and delivery of the securities to the Treasurer of the province.

2. Interest

1. Present Law

The Resolution (1) provides for interest payable from provincial revenues and expressly runs with the Treasurer of Ontario as security for the repayment of principal.

18.(1) "All sums received by the Commission from municipal corporations and others on account of principal and interest shall be invested by the Commission in securities of the province of Ontario, and also all interest accruing thereon, and such securities shall be delivered by the Commission to the Treasurer of Ontario as security for repayment of the advances made by the province to the Commission."
1918,c.14,s.7 part

3. Difficulties Raised

Prior to 1918, when the present law was enacted, all sums received by the Commission in respect of existing trusts were required to be paid over directly to the Treasurer of Ontario.

15. "All sums received by the Commission on account of sinking fund or interest shall be accounted for and paid over to the Treasurer of Ontario to be applied from time to time in the retirement of the securities given by Ontario for any debt incurred under the authority of this Act."
1906,c.16,s.18; 1907,c.19,s.21,redrafted; R.S.O. 1914,c.39,s.15; 1916,c.19,s.7 - underlined words added; 1918,c.14,s.7 - repealed.

3. Comment

It is understood that since the enactment of Section 15(1) - (ante) - in 1918, monies received by the Commission on sinking fund account have, from time to time, been invested in Provincial securities and that such securities have been delivered to the Treasurer of Ontario.

It is also reported, however, that the Treasurer of Ontario was holding on deposit $638,699.16 as of October 31st, 1922, in respect of sinking fund monies paid over by the Commission prior to 1918.



While it may have been the intention of the Legislature that all sinking fund monies theretofore or thereafter collected and in the hands of either the Commission or the Province should be invested in Provincial securities, the provisions of Section 15(1) were not declared retroactive, and, further, while requiring investment of sinking funds by the Commission, it makes no reference to investment of sinking funds by the Province. It would appear, therefore, that all sinking funds paid over to the Province prior to the coming into force of the amendment of 1918 are required to be "applied from time to time in the retirement of the securities given by Ontario for any debt incurred under the authority of

10. "All sums received by the Guarantors on account of existing Debt or interest shall be accepted for said purpose at the Treasury of Ontario to be applied from time to time in the reversed of the securities given by Ontario for any debt incurred under the authority of this act."
1924,c.10,s.12; 1927,c.12,s.1; rep.1930,c.6,s.4.
1928,c.30,s.12; 1929,c.12,s.7 - modified upon adopt 1929,c.14,s.7 - repealed.

8. Income

It is understood that since the contract of Ontario 1911) - (sum) - in 1928, monies received by the Commission as stated from accounts here, from time to time, been invested in Provincial securities and that such securities have been delivered to the Treasurer of Ontario.

It is also required, however, that the Treasurer of Ontario now holding on deposit $25,429.14 as at October 31st, 1928, in respect of stocks that monies paid over by the Commission prior to 1928.

This is why have been the intention of the Legislature that all stocks that monies borrowed in Securities Policies and in the hands of either the Commission or the Trustees should be invested in Provincial securities, the provisions of section 1911) were not designed retroactive,and, further, with regards investment of stocks funds in the Commission, it means no reference to investment of stocks funds in the Province. It would appear, therefore, that all stocks funds paid over to the Trustees prior to the coming into force of the amendment of 1911 are required to be applied from time to time in the redemption of the securities given by Ontario for any debt incurred under the authority of

this Act", according to the provisions of the old Section 15. (vide p.12).

It is suggested that Section 15(1) be amended to require all monies theretofore paid over to the Province on sinking fund account to be invested by the latter in Provincial securities.

Sinking funds collected by the Commission in connection with The Ontario Power Company and the Essex and Thorold Systems, it is understood are being duly invested in Provincial securities but the Commission takes the position that the requirement of Section 15(1) as to the delivery of "such securities ... to the Treasurer ... as security for repayment of the advances" does not apply to these securities. It is to be noted, however, that the section is of general application and not merely to sinking fund payments received by the Commission under Section 23.



If, as pointed out on a preceding page, the provisions of The Power Commission Act have no application to works constructed or acquired under the Development Acts, except where specifically declared applicable, the Commission is not required pursuant to Section 15(1) to invest its sinking funds collected in respect of such works in securities of the Province or to deliver such securities to the Province as security for the repayment of the monies advanced to construct or acquire such works.

only ten", according to the provisions of the old section 12. (italics added).

It is contended that section 12(1) is needed to invite all modern conveniences into the business on making land accessible to be insured by the Author in Investment securities.

Similar cases relished by the foundation in connection with the Electric Power Company and the Jones and Laughlin Steel Corporation are being daily invested in Investment securities but the foundation takes the position that the replacement of section 12(1) so to the delivery of "such securities ... to the Trustee ... as security for repayment of the payment" does not apply to these securities. It is to be noted, however, that the action is of general application and not merely to invite land bankers covered by the commission under section 12.

12, as printed was on a pressing page, the provisions of the Power Commission act have no application to mere conveniences or entities under the Jonesboro case, except where specifically desired applicable, the commission is not required pursuant to section 12(1) to issue its stamps that relieved in behalf of such mere in accordance or the trustee as to deliver such securities to the Trustee as security for the repayment of the mortgage advanced to securities or engine and cars.

# I N T E R E S T

## 1. Present Law

### (a) Interest Payable by Commission to Province

The Commission is required to pay annually to the Treasurer of Ontario interest on all cash advances received from the Province.

> 15.(1a) "The Commission shall pay to the Treasurer of Ontario annually interest on the indebtedness of the Commission to the Province for moneys advanced to the Commission by the Province as may be from time to time determined by the Lieutenant-Governor in Council as sufficient to reimburse the Province the full amount of interest paid by the Government on moneys raised for the purposes of the Commission and the charges incurred by it in providing such money." 8 Geo.V, c.14,s.7.



### (b) Interest Payable by Municipalities to Commission

Each municipality receiving power from the Commission is similarly required to pay annually to the Commission its proportion of the interest charges upon the monies expended by the Commission.

> 23. ".... the Corporation shall annually pay to the Commission its proportion as adjusted of
> (a) interest at the rate of four per centum per annum upon the money expended by the Commission on capital account ... and upon working capital," - and -
> (c) ".... such sum as the Lieutenant-Governor in Council may direct to cover the difference between the four per cent. interest charged on the money so expended on capital account, advances for working capital and all charges and expenses of providing such money." 1906,c.15,s.15; 1907,c.19,s.18,redrafted: R.S.O.1914,c.39,s.23; 1915,c.19,s.11; 1918,c.14,s.11.

# APPENDIX

## 1. Finance Act

### (a) Interest payable on debentures to Dominion

The Dominion is required to pay annually to the

Treasurer of Canada interest on all such amounts received

from the province.

18.(1a) "The Dominion shall pay to the Treasurer of Canada annually interest on the indebtedness of the Dominion to the province for money advanced to the Dominion by the province or any debentures issued by the Dominion to the province or guaranteed by the Dominion in respect of money advanced to reimburse the province the full amount of interest paid by the province on money raised for the purpose of the Dominion and the charges incurred in raising such money." 8 Geo.V, c.12(2).

### (b) Interest payable on indebtedness to Dominion

Each municipality receiving money from the Dominion

is similarly required to pay annually to the Dominion its

portion of the interest which the Dominion expended by the

Dominion.

18. "... the Corporation shall annually pay to the Dominion Government its proportion as adjusted of

(b) Interest on the sum of four per annum for

which has been expended by the Dominion-

wide or capital account ... and upon notice

notice." - and -

(c) "... with one or the Lieutenant-Governor in Council may direct to cover the difference between the four per cent. interest mentioned on the money so expended on capital account, advances for working capital and all charges and expenses of providing such money."

1924, c.18, s.18; 1927, c.18, s.12, repealed;
1930, c.20, s.20; 1932, c.18, s.11;
1933, c.19, s.11.

2. Historical Sketch

A. Period 1907-1918

(a) Interest Payable by Commission to Province

Prior to the enactment of The Power Commission Act 1918 (1918,c.14) the Commission was not, per se, under any direct liability to pay interest on cash advances to the Province; it was merely required to pay over to the Treasurer of Ontario the monies received from the municipalities on account of interest under the provisions of Section 23.

> 15.(1) "All sums received by the Commission on account of sinking fund or interest shall be accounted for and paid over to the Treasurer of Ontario to be applied from time to time in the retirement of the securities given by Ontario for any debt incurred under the authority of this Act."
> 1907,c.19,s.21; R.S.O.1914,c.34,s.15;1916,c.19,s.7.
> (The underlined words were inserted by 1916 c.19,s.7.)



Thus from 1907 until 1916 all sums received by the Commission were required to be paid over to the Treasurer of Ontario. From 1916 to 1918 the sums required to be paid over were restricted to sums received on account of sinking fund or interest.

(b) Interest Payable by Municipalities to Commission

Prior to the enactment of The Power Commission Act 1915, Section 11 of which amended Clause (c) of Section 23 by adding at the end thereof the words: "and such sums as the Lieutenant-Governor in Council may direct to cover the difference between the four per cent. interest charged on the money so expended on capital account and all charges and expenses of providing such

## 2. Electrical Lighting

### a. Taking Effect-Item

#### (a) Interest Payable by Electricity to Trustees

Prior to the enactment of the Power Commission Act 1919 (19*.*.*) the Commission was not, per se, water and direct liability to pay interest on cash advances to the Provincial is was merely subject to the act to the Treasurer of Ontario and receive from the municipalities on account of interest under the provisions of section 12.

> 19.(1) "All sums received by the Commission on account of principal and of interest shall be accounted for and paid over to the Treasurer of Ontario to be applied from time to time in the retirement of the securities issued by notwith for any debt incurred under the authority of this Act."
> 1907.*.19.*.*1; R.S.O.1914.c.*.19;1918.4.17.s.*.7.
> (The underlined words were inserted by 1919 c.19.s.7.)

Thus from 1907 until 1918 all sums received by the municipalities were required to be paid over to the Treasurer of Ontario. From 1918 to 1919 the sums relating to be paid over were restricted to those received on account of principal and interest.

#### (b) Interest Payable by Municipalities to Trustees

Prior to the enactment of the Power Commission Act 1919. Section 11 of which amended Clause (a) of section 12 as stated in the act inserted the words: "and more also at the interest-bearing in Canada and direct to serve the difference between the two per cent. Interest charged on the money so advanced to municipal councils and all expenses and commissions of previous year.

money",- which amendment was declared to apply to any money provided since the 31st October, 1914, each municipality was required to pay annually to the Commission its proportion of "interest at the rate of four per centum per annum upon the money expended by the Commission on capital account in the construction or purchase of the works". Hence, prior to 31st October, 1914, the municipalities were required to pay a flat rate of 4% on the capital expenditures of the Commission, and, until 1918, the Commission was required to pay over such collections to the Province.

On the 31st October, 1917, an Order-in-Council was passed, pursuant to the amendment of 1915 above referred to, requiring the municipalities to pay for the year 1917 an additional $51,290.11 being "the difference between the four per cent. interest .... and all charges and expenses of providing such money" advanced by the Province during the three-year period ending 31st October, 1917. This amount of $51,290.11 was less than the difference between the 4% rate and "all charges and expenses of providing such money" for the said three years. If it be the intention that the Province should be reimbursed the full cost for the three years of providing money subsequent to 31st October, 1914, it would appear that the Lieutenant-Governor in Council may at any time pass an Order-in-Council redetermining the balance payable by municipal corporations in respect of interest on monies advanced during this three-year period.

money", with amounts not desired to apply to any money previous since the 31st October, 1916. Such municipality was required to pay annually to the commission its proportion of "interest at the rate of four per cent upon the money expended by the Commission on capital account in the construction of purchase of the water". Hence, prior to 31st December, 1916, the municipalities were required to pay a flat rate of 4% on the capital expenditure of the Commission, and, until 1919, the municipalities had paid to pay over such collections to the treasurer on the 31st October, 1917, as interest on the Commission's bonds.

Between 1917 and 1919 there was a change in the municipalities to pay for the year 1917 on assessment 4%.



Ont.3Gr.11 ruling "the difference between the "cost and interest ---- and all charges and expenses of providing such money" incurred by the Province during the three-year period ending 31st October, 1917. This issue of Ont.3Gr.11 was less than the difference between the 4% rate and "all charges and expenses of providing such money" for the said three years. It is to the intention that the Province should be reimbursed the full sum for the three years of providing money advanced to 31st October, 1916. It would appear that the Treasurer-Province in charge of any time year or Inter-in-Council referring the salient payable by municipal corporations in respect of interest on moneys advanced during this three-year period.

3. Period 1916-1923

The amendments made to the Act by The Power Commission Act,1916, completely altered the relationship between municipalities, Commission and Province. Subsection (1) of Section 15 quoted on page 14 was repealed and the present law (vide p. 11) enacted. Instead of the Commission acting as a middleman between the municipalities and the Province, collecting interest monies under Section 23 and paying them over to the Province under Section 15, the Commission is directly responsible for reimbursing "the Province the full amount of interest paid by the Government on moneys raised for the purposes of the Commission and the charges incurred by it in providing such money".



3. Comment

The rate of interest on cash advances payable by the municipalities to the Commission under Section 23 and by the Commission to the Province under Section 15 (1a) is required to be determined by the Lieutenant-Governor in Council. The only Order-in-Council pursuant to Section 23 as amended was passed on 31st October, 1917, and dealt with interest for that year on advances to that date. No Order-in-Council has been passed pursuant to Section 15 (1a), unless recently.

In the absence of direction by Order-in-Council, an unauthorized practice was adopted and the Treasury Department computed the average rate of interest on all borrowings of the Province each year and rendered an account in accordance therewith to the Commission.

## B. Period 1918-1922

The contraction came to an end by the first Bankruptcy Act,1918. Regularly adopted the relatively minimum multipliers, Commercial and Treasury. Subsection (1) of section 12 reads as follows: If was repealed and the present law (Title 5, 11) provides.

Instead of the Commissioner setting up a minimum between the multipliers and the Treasury, collecting interest during periods as and getting them over to the Treasury under Section 18, the Commission is already responsible for computing the Treasury the full amount of interest paid by the Federal Reserve Banks and the payment of the Commission and the surplus transmitted by it to Treasury each month".



5. Comment

The rate of interest on each advance varying by the multiplicities in the Commission under Section 11 and by the commission in the Treasury under Section 12 [1a] is regulated by it determined by the interest-charger in Washington. The Commission-Treasurer Decision to Section 12 as amended was passed on July 1917, and thus was also interest for that year on advances in that date. The Commission-Treasurer has been passed unchanged in Section 12 (1a), unless recently.

In the absence of direction by Commission-Treasurer, an unofficial practice has arisen in the Treasury Department regarding the average rate of interest on all borrowings of the Reserve Banks year and transmitted to Treasury in accordance therewith to the Commission.

The Auditor, Mr. Clarkson, advises that the Commission has not only collected from the municipalities the sum of $51,290.11 directed by the Order-in-Council of 31st October, 1917, but also interest charges in excess of 4% in each year since 1917. In the absence of further Orders-in-Council under Clause (c) of Section 23 this practice is clearly unauthorised.

It would seem obvious that, if the principles of the present law with regard to the financing of the work of the Commission in general, and the payment of interest on funds advanced in particular, are accepted, the procedure contemplated by the Act should be strictly followed and Orders-in-Council passed determining the rate of interest payable.



There seems to be no need for two Orders-in-Council. It is suggested that Section 23 should be amended to eliminate the necessity of passing an Order-in-Council fixing the amount of interest, in addition to 4%, payable by the municipalities. To this end the following is suggested:

1. Amend Clause (c) of Section 23 by striking out the words added by 1915,c.19,s.11, viz.: "and such sum as the Lieutenant-Governor in Council may direct to cover the difference between the four per cent. interest charged on the money so expended on capital account, and all charges and expenses of providing such money".

2. Repeal Clause (a) of Section 23 and substitute therefor the following:

The auditor, Mr. Simpson, advises that the Commission has not only estimated from the municipalities the sum of $81,345.11 diverted by the Water-in-Council of Six centuries, 1924, but also interest charges in excess of $2 in each year since 1917. In the opinion of Messrs Waters-in-Council water clause 181 of Section 32 this question is strictly constitutional.

It would seem obvious that, if the principle of the Premier Law with regard to the financing of the municipalities in general, and the payment of interest on funds advanced in particular, are accepted, the procedure contemplated by the 1st enough be carried out forthwith and Waters-in-Council issue certificates the year of interest payable.

There seems to be no need for the Waters-in-Council. It is suggested that caution if should be exercised to minimize the necessity of passing on Water-in-Council rising the amount of interest. In addition to $2, payable by the municipalities. Mr. Cain and the Minister to suggested.

1. Insert Clause (b) of section 32 by striking out the words added by 1919,c.19,s.11, viz.: "and pays the as the Lieutenant-Governor in Council may direct to cover the difference between the five per cent. interest charged on the money on hand as mighty concern, and all expenses and amounts of providing such money."

2. Repeal Clause (b) of Section 32 and substitute therefor the following:

"(a) Interest at the rate of four per centum per annum upon the money expended by the Commission prior to October 31st, 1914, and at a rate sufficient to reimburse the Commission the interest and all other charges required to be paid by the Commission to the Province under the provisions of subsection (1a) of Section 15 upon money expended subsequent to October 31st, 1914, in the construction or purchase of works."

"(4) Interest at the rate of four per centum per annum upon the money received by the Corporation prior to October 31st, 1914, and in a case equivalent in relation to the commission the interest and all other charges related to be paid by the Commission to the Provincial under the provisions of subsection (3) of section 12 upon money expended subsequent to October 31st, 1914, in the construction or purchase of works."

# PAYMENTS

by

# MUNICIPALITIES

## A. Power Accounts - When Payable

### 1. Present Law

Municipalities are required, except as hereinafter noted, to pay their power accounts with the Commission in full annually. (vide Section 23).

Payments on account of sinking fund may be deferred at the discretion of the Commission for the first five years after a municipality commences to take power. (vide "Sinking Funds").

During the first three years after a municipality commences to take power, the Commission is authorized to extend to any date (subject to the payment of interest) the time for payment of accounts accruing due during such three years.

> 23a."The Commission may from time to time during the first three years after any municipality shall first begin to take power from the Commission extend the time for payment of the sums payable by any municipality or any part thereof, and such municipality shall pay to the Commission interest on the amount which may be in arrear or for the payment for which time is extended until the payment thereof, at such rate not exceeding seven per cent. per annum as the Commission may determine."
> 1916, 6 Geo.V, c.14,s.12.

### 2. Historical Sketch

The provision as to the annual payment of power bills contained in Section 23 is in substantially the same form as when first enacted in 1906. (1906,c.15,s.15).

# C A P I T A L

by

# E X P E N D I T U R E S

A. Power Commission - Water Supply

1. Present Law

Municipalities are required, except in exceptional cases, to pay their water revenues with the Commission in full annually. (Sec. Section 22).

Payments on account of existing debt may be deducted at the discretion of the Commission for the first five years after a municipality commences to sell power. (Sec. "Operating Funds").

During the first three years after a municipality commences to sell power, the Commission is authorized to extend to any date limited by the Company of Indianapolis the time for payment of annual operating and fixed water rates.

COPY

12a.-The Commission may from time to time during the first three years after any municipality shall first begin to take power from the Commission extend the time for payment of the same payable by any municipality or any part thereof, and such municipality shall pay to the Commission interest on the amount which may be in arrear at the payment by which time is extended until the payment thereof, at such rate not exceeding seven per cent, per annum as the Commission may determine."
1919, S Sec.7, c.14,s.12.

B. Distribution System

The provisions as to the annual payments of debt still contained in Section 22 is in substantially the same form as was first enacted in 1913. (1913,c.13,s.14).

The history of the provision respecting deferment of sinking fund payments is set out in the section headed "Sinking Fund".

Section 23a as to the three-year extension was originally enacted in 1918 and has not been amended subsequently.

3. Comment

The requirements of the Act as to the annual payments of accounts by municipalities are implemented by the provisions contained in their contracts with the Commission whereby they agree to pay in twelve (12) equal monthly instalments their respective proportion of interest, sinking fund, and the other charges enumerated in Section 23.



In practice the Commission estimates the charges and fixes an interim power rate for each municipality at the commencement of each year or as often as may be. Accounts are rendered monthly in accordance with this interim rate. At the close of the fiscal year, the charges entering into the cost of power are adjusted and apportioned, and a so-called "thirteenth bill", which may be either a debit or a credit account, is rendered.

The practice of rendering a "thirteenth bill" would appear to be sufficient compliance with the Act, if, as a matter of fact, debit bills so rendered were paid. In some cases, however, the municipalities do not pay such bills in cash and the Commission merely increases the interim rates until such time as

The history of the particular investment between at stating that Pumpers is not yet in the section headed "Holding Fund".

Section 24a as in the Ordre-Paper substituting the originally enacted in 1919 and has not been amended subsequently.

2. Income

The requirements of the Act as to the annual payments of amounts by municipalities are implemented by the provisions contained in their contracts with the Commission whereby they agree to pay in twelve (12) equal monthly instalments their proportion of interest, sinking fund, and the other charges enumerated in Section 15.

In practice the municipalities minimize the charges and fixes an interest power rate for each municipality at the commencement of each year or as often as may be. Arrears are provided monthly in accordance with this interim rate. At the close of the fiscal year, the charges commencing into the year of power are adjusted and apportioned, and a re-rating "Interest Bill", which may be either a debit or a credit account, is rendered.

The practice of rendering a "Interest Bill" would appear to be sufficient compliance with the Act, if, as a matter of fact, debit bills or credited were paid. In some cases, however, the municipalities do not pay such bills in cash and the Commission merely increases the interim rate until such time as

the deficit is wiped out. A special provision (Section 6d) was passed to sever the disposition of surpluses reported to the municipalities in the form of credit bills.("Surplus Funds").

Prior to 1918 when Section 23a (vide p.20) was enacted, there was no authority in the Act allowing the Commission to extend the time for payment of power bills even in the case of municipalities newly contracting, but the Commission assumed the authority.

The enactment of Section 23a was apparently intended to enable the Commission to lawfully relieve individual municipalities in special cases of making their annual payments in full while their loads were being built up. The Commission has adopted the policy of reducing annual payments during the first three years in the case of all municipalities.



It is suggested that if this policy of the Commission meet with the approval of the Legislature, Section 23a should be amended and all newly-contracting municipalities relieved for a period of three years from full payment of power bills accruing therein, and the Commission authorised to extend such relief in special cases to subsequent years.

B. Construction Accounts

1. Present Law

Section 15a (2) authorises the Commission to construct works and distribution systems for municipalities which have entered into a contract with the Commission for a supply of power and to collect the cost of same.

the matter is wiped out. A special provision (section 64) was passed to cover the disposition of surpluses acquired by the municipalities in the form of excess bills. ("Surplus Funds").

Prior to 1912 when matters stood (with (3,24) was enacted, there was no authority in the act allowing the commission to extend the time for payment of power bills even in the case of municipalities merely nonresisting, but the commission assumed the authority.

The amendment of section 32b was apparently intended to enable the Commission to lawfully relieve individual municipalities in special cases of making their annual payments in full while their funds were being built up. The Commission has adopted the policy of requiring annual payments during the first three years in the case of all municipalities.

It is suggested that it is also policy of the Commission must with the approval of the Legislature, section 32c should be amended and all newly-constructing municipalities relieved for a period of three years from full payment of power bills matured charges, and the Commission authorized to extend such relief in special cases to subsequent years.

3. Construction expense

1. Present law

Section 32c (2) authorizes the Commission to contribute towards the distribution system for municipalities which have entered into a contract with the Commission for a supply of power and to collect the cost of same.

15a.-(2) "The Commission may undertake and carry out the installation, construction, erection or purchase of supplies for any plant, machinery, wires, poles and other things for the transmission, distribution, supply or use of electrical power or energy for light, heat or power purposes, by a municipal corporation or commission which has entered into a contract with the Commission for the supply of electrical power or energy, and the Commission may charge and collect from such corporation or commission the cost of any work done or service rendered by the Commission, its officers, servants or workmen under this subsection."
6 Geo.V, c.19,s.8, part.

2. Historical Sketch

This provision was enacted in 1916 and declared retroactive to 31st October, 1910. (1916,c.19,s.8, part). It has not been amended.

3. Comment



The Commission anticipated the enactment of this provision, and undertook the construction of local works and distribution systems as early as 1910.

There would appear to be an infirmity in the Statute in that there is no time definitely fixed for the repayment of such expenditures incurred by the Commission and no provision for the payment of interest on arrears as in the case of annual power accounts rendered under Section 23a.

(iii)-(v) The Commission may authorize the supply for industrial, commercial, municipal or other purposes for the public, including supplies of supplies for the public, and the sale of electric power or energy for light, heat or power purposes, by a municipal corporation or commission which has entered into a contract with the Commission for the supply of electrical power or energy, and the Commission may charge and collect from such corporations or commissions the cost of any work done or service rendered by the Commission, its officers, servants or persons whom this subsection.

6 Geo.V, c.12,s.6. text.

5. Electrical Lines

This provision was enacted in 1916 and contained reference to Oil Cooper, 1912. (1912,c.12,s.6, text). It has not been amended.

6. Comment

The Commission anticipated the requirements of this provision, and undertook the construction of local water and distribution systems as early as 1910.

There would appear to be no intensity in the future in that there is no time definitely fixed for the repayment of such expenditures incurred by the Commission and no provision for the payment of interest on arrears so in the case of annual power consumers requires under section 10.

# S A L A R I E S

## A. Commissioners

### 1. Present Law

The Chairman of the Commission is paid an annual salary of $6,000 out of the Consolidated Revenue Fund.

> 5.-(1) "The Chairman of the Commission shall be paid an annual salary of $6,000 per annum, and the same shall be a charge upon and payable out of the Consolidated Revenue Fund of Ontario." 1906,c.15,s.4; 1907,c.19,s.5; 1912,c.14,s.2, repealed; R.S.O. 1914,c.39,s.5(1); 1915 c.19, s.2, repealed.

The Chairman and each member of the Commission may be paid an annual sum to be determined by the Lieutenant-Governor in Council, but not exceeding in all $15,000 to be paid by the municipalities as part of the cost of power.



> 5.-(2) "The Chairman and each of the other members of the Commission may be paid such annual sum for their services as members of the Commission as may be determined by the Lieutenant-Governor in Council, out of moneys to be provided as set out in clause c to section 23 of this Act." 1915,c.19,s.2, part
>
> 23. "... the Corporation shall annually pay to the Commission its proportion as adjusted by the Commission of
> (c) .... such sum not exceeding $15,000 per annum as the Lieutenant-Governor in Council may direct to be paid to the Chairman and other members of the Commission as remuneration for their services in addition to any sum payable to them out of the Consolidated Revenue Fund ..."
> 1914, c.16, s.4.

The payment of salary or other remuneration to members of the Commission is expressly declared not to disqualify such members from sitting and voting as members of the Legislature.

## CHAPTER

A. Constituents

1. Chairman's Fees

The Chairman of the Constituents is paid an annual salary of $5,000 out of the Consolidated Revenue Fund.

5-(1) "The Chairman of the Constituents shall be paid an annual salary of $5,000 per annum, and who shall be a charge upon the revenue and of the Consolidated Revenue Fund of Ontario."
1926, c.36, s.5; 1927, c.19, s.3; 1932, c.19, s.6.
Manitoba: R.S.C. 1924, c.32, s.3(1); 1932 c.12, s.1.
N.S.: Repealed.

The Chairman and each member of the Constituents may be paid an annual sum to be determined by the Lieutenant-Governor in Council, but not exceeding in all $12,000 to be paid by the municipalities as part of the cost of power.

5-(2) "The Chairman and each of the other members of the Constituents may be paid such sums as may be fixed by the Lieutenant-Governor in Council as their salaries or members of the Constituents as may be determined by the Lieutenant-Governor in Council, and no member to be provided is not out of pension a in section 28 of this act." 1919, c.19, s.2. Part

5. "... the Corporation shall annually pay to the Constituents its proportion as indicated by the Commission ..."

(4) .... such sum not exceeding $10,000 per annum as the Lieutenant-Governor in Council may direct to be paid on the salaries and other members of the Constituents as remuneration for their services in addition to any sum payable to them as of the Consolidated Revenue Fund ...."
1926, c.36, s.4.

The payment of salary or other remuneration to members of the Constituents is expressly declared not to disqualify such members from sitting and voting as members of the Legislature.

The Chairman is expressly declared not to disqualify

5.-(3) "Notwithstanding anything contained in The Legislative Assembly Act the election of the chairman or of any other member of the Commission, if a member of the Assembly, shall not by reason of the payment to him of any salary or other remuneration under this Act, or the acceptance thereof be avoided, nor shall he vacate or forfeit his seat or incur any of the penalties imposed by that Act for sitting and voting as a member of the Assembly."
1912,c.14,s.2, part; R.S.O.1914,c.59,s.5(2); 1915, c.19,s.2, part, repealed.

2. Historical Sketch

Prior to October 31st, 1911, the provisions of Section 4 of the original Act of 1906 remained in force.

4. "The member or members of the Commission other than any member of the Executive Council shall be paid such salary or other remuneration as may be fixed by the Lieutenant-Governor in Council out of such moneys as may be voted by the Legislature for that purpose."
1906,c.15,s.4; 1907,c.19,s.5. redrafted



At the session of 1912 this Section was repealed and the following substituted therefor:

5.-(1) "The Chairman of the Commission shall be paid out of such moneys as may be voted by the Legislature for the general purposes of the Commission, such annual salary or other remuneration not exceeding Six Thousand Dollars ($6,000) per annum as may be determined by the Lieutenant-Governor in Council.

(2) "Notwithstanding anything contained in The Legislative Assembly Act, the said Chairman shall not by reason of such salary or remuneration or the acceptance thereof avoid his election or vacate or forfeit his seat or incur any of the penalties imposed by the said Act for sitting and voting thereafter as a member of the Legislative Assembly.

(3) The members of the Commission other than the Chairman or a member of the Legislative

Assembly shall be paid out of such moneys as may be voted by the Legislature for that purpose, such annual salary or other remuneration as may be fixed by the Lieutenant-Governor in Council.

(4) "This section shall take effect as from the thirty-first day of October, A.D. 1911."

1912,c.14,s.2.

The Section appeared in the Revised Statutes of Ontario 1914, in the same form. A minor amendment was made to Subsection 2, and Clause (c) of Section 23 was amended, to include the provisions heretofore quoted, at the session of 1914.

In 1915, the whole of Section 5 was again repealed and the present law enacted with the provision that Subsections 2 and 3 should take effect as from 1st November, 1914, and apply to the services of any member of the Commission since that date.



3. Comment

Prior to November 1st, 1911, no remuneration was paid to the Chairman or to any member of the Commission. Throughout this period the Chairman was a member of the Legislature, and, in the absence of special legislation, he would have been disqualified by the Legislative Assembly Act from sitting and voting as a member of the Assembly had he accepted any salary or other emolument from the Crown.

In 1912, the salary of the Chairman of the Commission was fixed by the Legislature at $6,000, retroactive to 1st November, 1911, and a special provision enacted that the acceptance of such salary by him should not disqualify him from retaining his seat in the Legislature. This salary is a direct charge

The leading cases in the Judicial Districts of Ontario 1914, in the order form. A minor amendment was made in Section 4, the clause (d) of Section 12 was amended, to include the particular appropriation granted, as the practice of 1914.

In 1915, the whole of Section 5 was again repealed and the process was amended with the provisions that Subsections 2 and 3 should take effect as from 1st December, 1914, and apply to the services of any member of the Commission since that date.

5. Expenses

Prior to December 1st, 1913, no remuneration was paid to the Chairman or to any member of the Commission. Frequent late payment the Chairman was a member of the Legislature, and in the absence of special legislation, he would have been disqualified by the Legislative Assembly but from sitting and voting as a member of the Assembly but be recognized any salary or other emolument from the Crown.

In 1913, the salary of the Chairman of the Commission was fixed by the Legislature as $4,000, retroactive to 1st December, 1913, and a special provision enacted that his acceptance of such salary by him should not disqualify him from retaining his seat in the Legislature. This salary is a direct charge

against the Consolidated Revenue Funds and is not repayable by the municipalities.

In 1914, Section 23 was amended to require the municipalities to provide a sum not exceeding $15,000 to be paid to the Chairman and other members of the Commission in addition to any sum payable out of the Consolidated Revenue Funds. Pursuant thereto an Order-in-Council was passed on the 9th day of October, 1914, directing that the Chairman be paid as from 1st June, 1914, an annual sum of $6,000 in addition to his salary of $6,000. The Auditors advise that Sir Adam Beck has accepted this additional $6,000 since 1st June, 1914.

No member of the Commission other than the Chairman received remuneration prior to 1st November, 1914. No remuneration was provided in the Order-in-Council of October, 1914, and a member of the Commission who was a member of the Assembly was in the same position as the Chairman had been prior to 1912, i.e., unable to accept any remuneration and retain his seat in the Legislature. Accordingly it was necessary to further amend the Act in 1915 extending the saving provisions of the 1912 amendment to cover other members of the Commission as well as its Chairman.



On the 29th of June, 1915, an Order-in-Council was passed pursuant to the 1914 and 1915 amendments, directing that members of the Commission other than the Chairman be paid the sum of $4,000, per annum, from the 1st November, 1914. All the members of the Commission from time to time since 1914 have accepted the sums so directed to be paid.

against the Committee Tavern Fund and is not expected by the municipalities.

In 1919, Toronto it was decided to delete the municipalities to provide a sum not exceeding $3,000 to be paid to the Taverns and other members of the Commission in addition to any sum payable out of the Consolidated Revenue Fund. Previously there is Order-in-Council was passed on the 8th day of October, 1918, directing that the Chairman be paid at from 1st June, 1918, an annual sum of $4,000 in addition to his salary of $4,000. The members during that Sir John Hoy had managed this additional $4,000 since 1st June, 1918.

In spite of the Commission other than the Chairman received remuneration prior to 1st January, 1918. In consequence was provided in the Order-in-Council of October, 1918, and a number of the Commission who was a member of the assembly was in the same position as the Chairman had been prior to 1918, i.e., unable to accept any remuneration and remain his seat in the Legislature. Accordingly it was necessary to further amend the Act in 1919 extending the saving provisions of the 1918 amendment to cover other members of the Commission as well as the Chairman.

On the 8th of June, 1920, an Order-in-Council was passed pursuant to the 1918 and 1919 amendments, directing that members of the Commission other than the Chairman be paid the sum of $4,000, per annum, from the 1st November, 1919. All the members of the Commission from time to time since 1918 have accepted the sums so directed to be paid.

It is suggested that the Act be amended striking out the limitation of $15,000 required to be provided by the municipalities under Section 23; and requiring the Lieutenant-Governor in Council to determine the remuneration of the Commissioners in respect of all services rendered directly or indirectly to the municipalities, the Commission and the Province, and the proportion thereof to be annually apportioned to and paid by municipalities in the cost of power.

3. Chief Engineer, Accountant and Secretary

1. Present Law

The salaries of the Chief Engineer, Accountant and Secretary are fixed by the Commission, subject to ratification by the Lieutenant-Governor in Council.



> 6.-(1) "The Commission may appoint a Chief Engineer, an Accountant and a Secretary and such other engineers, accountants, officers, servants and workmen as may be deemed requisite.
> (2) "The salaries or other remuneration of the Chief Engineer, Accountant and Secretary so appointed shall be fixed by the Commission, subject to the ratification of the Lieutenant-Governor in Council." 1907,c.19,s.6; R.S.O.1914,c.39,s.6; 1916,c.19,s.2; 1918,c.14,s.2.

2. Historical Sketch

Section 6 of the Act quoted above was first enacted in 1907. It required the Lieutenant-Governor in Council to ratify the salaries of all employees of the Commission as in the case of the Ontario Civil Service. In the Revision of 1914 its form only was changed.

6.-(1) "The Commission may appoint a chief engineer, an accountant and a secretary, and such other engineers, accountants, officers, servants and workmen as may be deemed requisite.

(2) "The salaries or other remuneration of the persons so appointed shall be fixed by the Commission, subject to the ratification of the Lieutenant-Governor in Council, and shall be payable out of such money as may be appropriated by the Legislature for that purpose."

1907,c.19,s.6; R.S.O. 1914,c. 39,s.6.

In 1916, the words "and shall be payable out of such money as may be appropriated by the Legislature for that purpose" were deleted.

In 1918, the provisions of Subsection (2) were restricted to certain officers by striking out the word "persons" in the first line and substituting therefor the words "Chief Engineer, Accountant and Secretary".



3. Comment

Prior to 1918 the salaries of all officers and employees of the Commission were required to be ratified by the Lieutenant-Governor in Council. Since 1918, the salaries of the Chief Engineer, Accountant and Secretary only have required such ratification.

There is no record of the ratification by the Lieutenant-Governor in Council of the salaries of any officers or employees of the Commission either prior or subsequent to 1918. If Section 6(2) is to be considered a dead letter, it might better be repealed.

4.-(2) "The commission may appoint - under regulations to be approved and a secretary, and such other officers, servants, assistants, advisers, experts and workmen as may be deemed expedient.

(3) "The salaries or other remuneration of the persons so appointed shall be fixed by the Commission, subject to the activities of the /Commissioner/ approved in council, and shall be payable out of such funds as may be appropriated by the Legislature for that purpose."

1947.c.59,s.4; May.9, 1954.c.12,s.5.

In 1919, the words "and shall be payable out of such funds as may be appropriated by the Legislature for that purpose" were deleted.

In 1919, the provisions of Section (2) were restricted to certain officers by striking out the word "persons" in the first line and substituting  words "Water Bailiff, assistant and Secretary".

5. Powers

Prior to 1919 the salaries of all officers and employees of the Commission were required to be settled by the Lieutenant-Governor in Council. Since 1919, the salaries of the Water Bailiff, Assistant and Secretary only have to be settled upon restriction.

There is no record of the activities of the Lieutenant-Governor in Council of the salaries of the officers of employees of the Commission either prior or subsequent to 1919. If Section 5(2) is to be considered a dead letter, it might better be repealed.

# C O M P T R O L L E R

## 1. Present Law

The Commission is authorized by Section 6a of the Act to appoint a Comptroller. The provision is permissive and the Commission has never seen fit to make any appointment.

> 6a.-(1)"The Commission, with the approval of the Lieutenant-Governor in Council may appoint an officer to be known as the Comptroller of the Commission who shall hold office during the pleasure of the Lieutenant-Governor in Council and shall countersign every cheque issued by the Commission, but before countersigning shall satisfy himself that the issue of the cheque is authorized."
> 1916,c.19,s.4; 1917,c.20,s.2.



The duties of the Comptroller, if and when appointed, are set out in Subsection (2) and (4) of Section 6a. Provision is made for a vacancy in the office by Subsection (5) and Subsection (7) requires the salary to be fixed by the Commission, approved by the Lieutenant-Governor in Council, and paid by the Commission as part of the cost of administration.

## 2. Historical Sketch and Comment

The Comptroller provisions (Section 6a) were first enacted in 1916 (c.19,s.4). In its original form the Section authorized the Lieutenant-Governor in Council, not the Commission, to appoint a "Comptroller" and from the terms of the Section it appears that a Comptroller so appointed would look for authority and instruction rather to the Lieutenant-Governor in Council than to the Commission. For example, the salary of the Comptroller was to be fixed by the Lieutenant-Governor in Council and paid out of Legislative appropriations.

## E X A M I N A T I O N

1. Drafting Law

The Constitution is interpreted by tribunals in at the act to repeal a Conspiracy. The practice is substantive and the Constitution has never been able to make any appointments.

> Q.-(1) "The Constitution, with the approval of the Lieutenant-Governor in Council may appoint an officer to be known as the Comptroller of the Treasury who shall have charge of the planning of the Lieutenant-Governor in Council and shall establish, but before establishing such charge issued by the Treasury Board, the Auditor General of the ministry shall vary the issue of the report in question."
> 1954,c.72,s.4; 1957,c.2.

The Office of the Comptroller, if not even abolished, has not in commission (1) and (4) of section 6a. Provision is made for a vacancy in the office of Comptroller (2) and therefore (3) requires the office to be filled by the Constitution, appointed by the Lieutenant-Governor in Council, and paid by the Comptroller as part of the cost of administration.

2. Financial Control and Control

The Comptroller practice practice (section 8) were first created in 1954 (s.12,s.4). In its original form the Constitution authorized the Lieutenant-Governor in Council, and the Constitution, to appoint a "Comptroller" and from the date of the Constitution it appears that a Comptroller as mentioned would look for auditing the instructing rules to the Lieutenant-Governor in Council when in the Constitution. Yet example, the salary of the Comptroller was to be fixed by the Lieutenant-Governor in Council and paid out of Legislative appropriations.

In 1917 (c.20,s.2), the Section was amended. Subsection (1) quoted on page 30 took its present form. Whereas subsection (2) had read "The Comptroller shall give such directions as he may deem proper as to the books of account kept by the Commission", it was amended to read as it now reads: "The Comptroller may give such directions as he may deem proper, and as the Commission may approve, as to the books of account kept by the Commission." The "system and method" of keeping the Commission's books to be prescribed by the Comptroller was originally to be approved by the Lieutenant-Governor in Council; as the provision now reads the approval of the Commission and not of the Lieutenant-Governor in Council is required. The salary of the Comptroller, instead of being fixed by the Lieutenant-Governor in Council is now to be fixed by the Commission, with the approval of the Lieutenant-Governor in Council. Generally it is apparent that the principle behind the original provision was completely repudiated; instead of the Government naming a Comptroller appointed by and responsible to the Lieutenant-Governor in Council, absolutely independent of the Commission, the Section as amended merely authorised the Commission to engage another officer, to be known as a Comptroller, whose instructions and authority would emanate solely from the Commission and whose responsibility to the Government would appear to be no greater than the present Accountant of the Commission.



The Section 6a was again amended in 1918 (c.14,s.3). The nature of the amendments would seem to indicate a decision of the

In July (p.24,n.1), the decision was reversed. Interestingly [1] quoted on page 30 from its present form. Whereas subsequently [1] and read "The Comptroller could give such directives on the only case prior to it the board of arrears was by the Commission", it was amended to read as it now reads: "The Comptroller can give such directives or be any case prior. But in the Commission not directly as to the basis of arrears was by the Commission." The "prior and method" of keeping the Commission's notes is to be prescribed by the Comptroller was originally to be approved by the Hydroelectric Commission in general or the previous one made the approval of the Commission was not of the Lieutenant-Governor in Council in re-gards. The salary of the Comptroller, instead of being fixed by the Lieutenant-Governor in Council, was to be fixed by the Commission, with the approval of the Lieutenant-Governor in Council. Generally it is apparent that the principle behind the original provision was completely theoretical; instead of the Government making a Comptroller appointed by and responsible to the Lieutenant-Governor in Council, absolutely independent of the Commission, the Section as amended actually authorized the Commission to engage another officer, so be known as a Comptroller, whose instructions and authority would emanate solely from the Commission and whose responsibility to the Government would appear to be no greater than the present arrangement of the Commission.

The Section in the Act as amended in 1918 (p.24,n.5). The nature of the amendments would seem to indicate a desire of the

Commission not to appoint a Comptroller, for the time being, at least; the purpose of the amendments was apparently to enable the Commission to implement that policy. For example, the original Section contemplated that the Annual Report of the Commission would be made to the Provincial Treasurer "through the Comptroller". (Subsection (3)). This Subsection was not amended in 1917. In 1918, the words "through the Comptroller" were repealed.

The Section has not been amended since 1918, and, being in its present form useless, should be repealed.

Consultation was to explain a compromise, the one then noted, is likely the position of the Government was apparently to create the impression to implement that policy. For example, the original Hydro consumers that Municipal Supply at the Commission media on June 1: the Provincial Treasurer "retained the compromise-implementation idea." This Subcommittee was not amended in 1927. In 1929, Jan wrote "through the compromise" were suggested.

The Section has not been amended since 1928, and, using as its primary mode analysis, should be repealed.

# A U D I T O R

## 1. Present Law

The provisions respecting the audit of the accounts of the Commission are as follows:

> 6a.-(6) "The accounts of the Commission shall, upon the direction of the Lieutenant-Governor in Council, be from time to time, and at least once every year, audited either by the Auditor for Ontario, or by other auditor or auditors named in the direction of the Lieutenant-Governor in Council."
> 1916,c.18,s.4,part; 1918,c.14,s.3.
>
> 14. "The Lieutenant-Governor in Council may from time to time raise by way of loan in the manner provided by The Provincial Loans Act such sums as the Lieutenant-Governor in Council may deem requisite for the purposes of this Act; and such sums may be paid over to the Commission and shall be accounted for and audited in the manner provided with respect to the management of the public revenue and public accounts."
> 1906,c.15,s.17; 1907,c.19,s.20; R.S.O.1914,c.39,s.14.



## 2. Historical Sketch

Prior to 1916, the only provision in The Power Commission Act as to the manner in which, or by whom, the accounts of the Commission were to be audited was Section 14 set out above. The Act required the Commission to pay over all sums received by it to the Treasurer of Ontario. As a matter of interior economy, the status of the Commission closely resembled that of the Insurance Department, or any other Provincial Department, today. The only amendment since 1916 was made in 1918, when the words "named in the direction of the Lieutenant-Governor in Council" were added.

3. Comment

It is to be noted that there is no requirement as to the submission of reports by the Auditors so appointed to the Province. The Commission is required to report annually to the Treasurer of Ontario and the nature of the information expected is specifically mentioned. As a matter of fact, the Auditors, Messrs. Clarkson, Gordon & Dilworth, have adopted the practice of reporting to the Province annually. It is understood, however, that some doubt has been raised as to the right of the Auditors to report direct to the Government.

It is submitted that it would be well to provide by legislation that the Auditors shall report to the Treasurer of Ontario and prepare and furnish such statements, with respect to the accounts of the Commission, to him as he shall from time to time request and direct.

A. Summary

It is to be noted that there is no requirement as to the evaluation of values by his auditors or speakers in the Ayurveda. The condition is supplied by every schoolgirl in the Tapaswaya of Indaria and the mirror of her introversive Aspected in symbolically mythical. In a matter of fact, the industry, energy, fidelity, tender & alertness, have replaced the practice of repeating in the traditional manuscripts. It is unnecessary, however, that some advert for that right to be put right in the matters to impart matters in the Sanskrit.

It is submitted that it would be well to notify to legislation that the Agricultural School in the Province of Dakshin and Punjab and Tamilnad must provide, with respect to the materials at the Institutions, to have as to least that also to elan rajyam and dinar.

# GENERAL AND RESERVE FUNDS

1. Present Law

General Fund.

1. All sums received by the Commission from every source are deposited in one common fund known as the "General Fund", out of which all expenditures of the Commission are made "without regard to the special trusts or purposes" under which the constituent parts of the fund come into its hands.

> 6b. "All special funds and the income and revenue thereof and all moneys and revenues which now are in or shall come into the hands of the Commission whether as agent, trustee, owner or otherwise shall form one fund to be called "General Fund" and the Commission shall have power from time to time to make any and all expenditures out of the said fund for the purposes and objects of the Commission without regard to the special trusts or purposes under which the same or any part thereof may come to its hands; and the Commission shall account for and from time to time pay out of the said funds all moneys for which it shall be so accountable."
> 1918,c.14,s.4,part.



Reserve Fund.

2. The authority of the Commission to set apart certain reserve funds is covered by two distinct sections enacted at different times, viz; Section 6c and Section 14b.

> 6c. "The Commission may retain and set apart out of the moneys coming into its hands from time to time such sums as may in the opinion of the Commission be sufficient,-
> 1. To provide for the renewal, reconstruction, alteration and repair of the works constructed and operated by the Commission;
> 2. To meet interest upon working capital and for the operation of the Commission under section 21 of this Act, and to meet obligations, charges, and expenses arising from time to time in the course of such operations;

3. And to meet any unforeseen expenditures or costs caused by the destruction or injury to any of the works of the Commission or otherwise incurred or payable by the Commission."
1918, c.14, s.4, part.

14b. "The Commission may set apart out of the moneys coming to its hands from time to time from any municipal corporation, railway company, or distributing company such sums as may be sufficient in the opinion of the Commission to provide for the renewal, reconstruction, alteration and repair of the works constructed and operated by the Commission, and to meet any unforeseen expenditure caused by the destruction or injury of any such works."
1916, c.19, s.6, part.

Superannuation Fund.

3. The Commission is authorized to establish a Superannuation Fund for its employees by Section 6cc.



6cc. "The Commission, with the approval of the Lieutenant-Governor in Council, may establish a fund for the payment to permanent employees of the Commission, of superannuation and retiring allowances, or of a gratuity or annual allowance to the dependents of employees dying while in the service of the Commission, and a fund for providing sick benefits for permanent employees, and may provide for contributions to such fund by the Commission and by its employees, or for the establishment and support of such fund entirely at the cost of the Commission."
1919, c.16, s.2, part.

The permanent employees of the local Hydro Commissions may share the benefit of this Superannuation Fund on certain terms.

6ccc. "The Commission, with the approval of the Lieutenant-Governor in Council, may enter into an agreement with the corporation of any municipality receiving power from the Commission for including permanent employees of any commission established under The Public Utilities Act, or under this Act, for the management and control of works for the distribution of electrical power or energy in the municipality, upon such terms as to the contribution by a municipal corporation and

otherwise as may be deemed expedient."
1919, c.16,s.2, part.

Sinking Fund.

4. The Commission is required to invest all sums received on account of sinking fund in Provincial securities and deposit such securities with the Treasurer of Ontario as security for the repayment of advances by the Province to the Commission.

15.-(1) "All sums received by the Commission from municipal corporations and others on sinking fund account shall be invested by the Commission in securities of the Province of Ontario, and also all interest accruing thereon; and such securities shall be delivered by the Commission to the Treasurer of Ontario as security for repayment of the advances made by the Province to the Commission."
1918,c.14, s.7, part. (vide "Sinking Funds")

Surplus Funds.

5. The Commission may retain any surplus balances in its hands at the credit of any municipality during the continuance of its contract as security against future obligations of the municipality, provided that it allows the municipality interest at 4% upon the balance retained.



6d. "Any surplus or part thereof in the hands of the Commission from any municipality may be retained by the Commission as security against future obligations to the Commission of the same municipality for so long during the continuance of the contract of the municipality as the Commission may think fit but the Commission shall allow to the municipality interest at the rate of four per centum per annum upon the amount of such surplus from time to time retained by the Commission."
1918, c.14,s.4, part.

6. The Commission is authorized to invest any funds in its hands, other than sinking funds, and not required for the objects of

Sinking Fund.

4. The Commissioners are required to invest all moneys received on account of sinking funds in provincial securities and deposit such securities with the Treasurer of Ontario as weekly the exigencies of matters by law intrusted to our consideration.

Sec.-12. "All moneys received by the Commissioners from municipal corporations and deposit as aforesaid shall be invested with the Treasurer of Ontario in securities of the Province of Ontario, and also all interest accruing thereon and such securities shall be delivered by the Commissioners to the Treasurer of Ontario as security for the payment of the advances made by the Province to the Commissioners."

Ibid., s.-s. 4. ibid. (vide "Sinking Funds")

Surplus Funds.

5. The Commissioners may invest any surplus moneys belonging to the sinking funds in the purchase of any municipality coming under the operations of the Act, as security for such moneys, subject to the approval of the municipality, provided that it allows the municipality interest at 4% upon the balance remaining.

Sec. "Any surplus or part thereof in the hands of the Commissioners from any municipality may be invested by the Commissioners as aforesaid in the purchase of debentures issued by the Commissioners to the Province of Ontario, or in the purchase of the debentures of any municipality in which case the Commissioners shall pay over to the municipality interest at the rate of 5% per annum for every upon the amount of such surplus from time to time existing for the benefit of the municipality."

Ibid., s.-s. 4. ibid.

6. The Commissioners are authorized to invest any funds in the sinking fund, or surplus sinking funds, and to exercise the rights of owners of

Investment of Funds. the Commission, in debentures or other securities of the Province of Ontario or of the Dominion of Canada.

6a. "The Commission may, at its discretion, invest any funds other than sinking funds not required in carrying out the objects of the Commission in the debentures or other securities of the Dominion of Canada or of the Province of Ontario." 1916, c.14, s.4, part.

Application of Other Income. 7. Interest on the indebtedness of the Commission to the Province is paid annually under Section 15 (1a). (Vide "Interest").

All other sums are applied under the terms of the provisions heretofore quoted and those of Section 15 (2):

15.-(2) "The income of the Commission shall be applied to the necessary operating expenses, to the preservation, improvement, supervision, renewal, repairs, maintenance and insurance of its works, and to the payment of the remuneration and expenses of the Commissioners, and the salaries of officers and others employed by the Commission, and to other incidental expenses." 1916, c.19, s.7 (2).



Application of Profits. 8. The Commission is authorized to sell electric power to private companies or to "any other corporation or person", and any net profit made by the Commission in so supplying power is to be applied in reducing the cost of power to the municipalities having power-at-cost contracts with the Commission, i.e., Hydro municipalities.

21.-(1) "Subject to the approval of the Lieutenant-Governor in Council the Commission may contract from time to time with a railway company or a distributing company or with any other corporation or person for the supply of electrical power or energy.

(2) "Any net profit made by the Commission in supplying power under the next preceding subsection, after making provision for the cost of acquiring or

constructing and of maintaining the works by means of which the power or energy is supplied, shall be applied in payment of the cost of maintaining the works acquired or constructed and operated by the Commission. "
1906, c.15,s.9,part; 1907, c.19,s.16,part; R.S.O. 1914,c.39,s.21, part.

2. Historical Sketch

Prior to 1917, the Commission was required to pay over all sums received by it to the Treasurer of Ontario. In that year the sums required to be paid over were restricted to sums received "on account of sinking fund or interest":

> 15.-(1) "All sums received by the Commission on account of sinking fund or interest shall be accounted for and paid over to the Treasurer of Ontario to be applied from time to time in the retirement of the securities given by Ontario for any debt incurred under the authority of this Act."
> 1906,c.15,s.18; 1907,c.19,s.21, redrafted; R.S.O. 1914, c.39,s.15; 1916,c.19,s.7 - underlined words added; 1918,c.14,s.7 - repealed.



The application of the other income of the Commission was provided for by Section 15 (2); and Section 14b authorising certain reserve funds was enacted.

In 1918, Section 6b authorising the so-called "General Fund", Section 6c providing for Reserve Fund in terms similar to Section 14b, Sections 6cc and 6ccc with regard to Superannuation Fund, Section 6d with regard to Surplus Funds and Section 6e regarding the investment of any funds other than Sinking Funds in certain Government securities, were enacted. At the same time, Section 15(1) was repealed and two new Subsections substituted therefor providing for the disposition of sinking fund monies and the payment of interest by the Commission to the Province. (Vide p.12)

3. Comment

1. General Funds

It has been stated that this Section (6b) was drafted by G. N. Kilmer, K.C., Counsel to the Commission, at the request of the Auditor, Mr. Clarkson, and that the reason for its enactment was to do away with the necessity of establishing innumerable different trust funds by forming one general fund and to simplify the allocation of the proper amounts to be charged and credited to each municipality for power.

Inasmuch as some doubt may exist as to the authority of the Commission to use appropriations coming into its hands for a specific purpose, for other purposes, it is submitted that declaratory legislation should be passed providing that any monies which come into the hands of the Commission from any appropriation voted by the Legislature or procured under Special Warrant should not be used for any purpose except that specified in such appropriation or Special Warrant.



2. Reserve Funds

It was noted in the Historical Sketch (ante) that Section 6c was enacted in 1918. The apparent intention was to supplant Section 14b which had been passed in 1916. The language of the two Sections is similar and all the authority of the earlier enactment appears to be included in the later Section. In the interests of simplicity and to obviate confusion, it is suggested that Section 14b might well be repealed.

Section 6c authorizing certain reserve funds has been

interpreted as including a reserve against accounts of municipalities unable to pay their power bills. "In the event that any municipality or corporation taking power from a system shall become unable to meet its share of annual costs the Commission is empowered to provide for bad debts so incurred out of income." (Auditor's Special Report, 1916, p.18).

Section 6c authorizing the Commission to set apart funds to meet "obligations, charges and expenses arising from time to time in the course of such operations" read with Section 15 (2) relating to the application of the income of the Commission, probably empowers the Commission to set up a reserve for doubtful or bad accounts. The language is by no means definite, however, and inasmuch as any losses not borne by the municipalities must ultimately be charged against the Province, it is suggested that the interests of the Province should be safeguarded by giving the Commission express authority to set up such a reserve, and direction that the Hydro municipalities generally shall be held responsible for the default of any one of their number. The reserve should be available, not only to pay the accounts of municipalities unable to pay their bills, but to take care of the accounts of a municipality which refuses to pay its bills and which, for one reason or another, cannot or should not, in the opinion of the Commission, be collected by process of law.

3. Surplus Funds

Although in theory the municipalities receive power from the Commission at cost, in actual practice payments in excess of cost are inevitable. Each municipality receiving power from the Commission makes monthly payments for power in accordance with interim rates fixed by the Commission on the basis of the estimate of the cost of power for the ensuing fiscal year. At the close of each fiscal year all the charges entering into the cost of power are adjusted and apportioned with the result that individual municipalities may have either overpaid or underpaid the total cost, except in the very rare cases where the actual cost corresponds exactly with the estimated cost. Prior to 1918 the Commission had no right under the Act to retain surplus funds so collected from municipalities in excess of the cost of power. As a matter of fact, the Commission had assumed the authority to do so and employed surplus funds for the general purposes of the Commission. (Auditor's Draft Report, 1916, page 18).



Section 6d passed in 1918 authorises the Commission to retain any surplus coming into its hands from municipalities in respect of the cost of power. The only requirement is that the Commission must allow the municipalities interest at the rate of 4% upon the amount of such surpluses from time to time retained by the Commission. It is apparent that as the provision now reads it would be possible for the Commission by basing the interim rates on unduly conservative estimates to acquire large sums of money by way of overpayment and to have the use of such money in con-

b. Jurisdiction Issues

Although it is clearly the municipalities rather than the Commission or state, in actual practice jurisdiction is unclear or even are interested. Such municipality receiving power from the Commission cannot readily judge/ for power is accomplished with investor owned lines by the Commission on the basis of the estimate of the need or power for the ensuing fiscal year. In the view of each fiscal year all the municipalities/ the case of power are delivered and expenditures with the result that individual municipalities may have either overpaid or underpaid the total sum, except in the very rare cases where the actual need corresponds exactly with the estimated needs. Prior to 1919 the Commission had no right under the law to refund surplus funds to municipal from municipalities in excess of the need of power. As a matter of fact, the Commission had worked the municipality to do so and employed outside funds for the general purposes of the Commission. (Institute State Papers, 1919, page 19).

Section 24 passed in 1919 authorizes the Commission to refund any surplus resulting from the Commission to refund of the cost of power. The only requirement is that the Commission must allow the municipalities interest of the rate of all over the amount of each overpayment from time to time by refunds by the Commission. It is expected that on the preferred and which it would be possible for the Commission by having the actually paid on monthly measurative estimates to develop large sums of money by way of overpayments and to have the use of such money in anticipation of the need of the municipalities.

sideration of paying the low interest rate of 4%. There is no indication that the Commission has ever attempted in effect to force a loan from the municipalities in this manner. On the other hand, it is suggested that legislation should be passed to obviate such a possibility.

4. Investment of Funds

In 1916, Section 6e was passed to authorize the Commission to invest any of its funds, other than sinking funds, in securities of the Dominion of Canada or of the Province of Ontario. It would seem that such a provision was unnecessary and that the Commission did not need any special authority to invest its funds in trustee securities. In any event, the enactment of the Section indicates a direction on the part of the Legislature as to the disposition by the Commission of any funds in its hands not required for its general purposes.

elimination of paying the interest rate of 6%. There is no indication that the Commission has been approached in order to force a loan from the municipality in this manner. On the other hand, it is suggested that legislation should be passed to provide such a possibility.

4. Investment of Funds

In 1951, Dantzig Ha was passed to subsidize the construction in Israel may be the first, other than state financing funds, in municipalities or the Ministries of Defense or of the Interior of Israel. It would seem that upon a preliminary and hypothetical and that the Commission did not seek any special authority to invest its funds in Israeli securities before every. The treasurer of the Jewish Congress's attention on the part of the legislature as to the eligibility of the Commission of any funds in the hands of the Congress for the general purposes.

# PUBLICATION OF ESTIMATES

1. Present Law

The law governing the negotiation of power contracts between municipalities and the Commission is set out in Sections 17 and 18.

17. "Neither the Province nor the Commission nor any member thereof shall incur any liability by reason of any error or omission in any estimates, plans or specifications prepared or furnished by the Commission." 1906,c.15,s.6, part; 1907,c.19,s.24; R.S.O. 1914, c.39,s.17.

18.-(1) "Any municipal corporation may apply to the Commission for the transmission and supply to the corporation of electrical power or energy for the use of the corporation and the inhabitants of the municipality for lighting, heating and power purposes or for any or either of such purposes or for any of the purposes mentioned in section 20.

(2) All contracts for such transmission and supply heretofore entered into between the Commission and any municipal corporation shall continue to be binding on the parties thereto according to the terms thereof and subject to the provisions of this Act.

(3) The Commission shall thereupon furnish to the corporation a statement of the maximum price per horse-power at which the electrical power or energy will be supplied at the point of development or of its delivery to the Commission, and an estimate of the cost of constructing or providing a transmission line by means of which the amount of electrical power or energy required by the corporation is to be supplied and of maintaining the same, and may furnish to the corporation plans and specifications of the works, plant, machinery and appliances necessary for the distribution of such power or energy by the corporation and an estimate of the cost thereof, and such other information as the Commission may deem advisable.

(4) The council of the municipal corporation may thereupon enter into a provisional contract with the Commission for the supply of electrical power or energy for the purposes mentioned in this Act.

# TRANSMISSION OF ELECTRICITY

## 1. General Law

The law governing the supplying of power contains various complications and the Commission is not sure in instances 17 and 18.

17. "Unless the provisions of the Commission or any other tribunal shall have any liability to damage of any error or omission in any estimate, plans or specifications prepared or furnished by the Commission." 1924, s.14, s.4. cf. 1927, s.17, s.19; 1930, s.19, s.2.

18.-(1) Any municipal corporation may supply or the Commission for the municipality and supply in the corporation of municipal power or energy for use of the corporation or any person or municipality for lighting, heating and power purposes or for any or other of such purposes or for any of the purposes mentioned in section 17.

(2) All contracts for such transmission and supply entered into between the Commission and municipal corporations shall continue to be binding on the parties thereto according to the terms thereof and subject to the provisions of this act.

(3) The Commission shall thereupon furnish to the corporation a statement of the maximum price per horsepower at which the electrical power or energy will be supplied at the point of delivery or of its delivery to the municipality, and on receipt of the notice of the corporation providing i furnishing that it desire at which the amount of electrical power or energy required by the corporation is to be supplied, and of municipal the same, and pay further to the corporation plant and municipality at the price, plus, respective the applicable proportion of such power or energy for the purpose of the corporation and in accordance with the terms of the contract, and such other information as the Commission may deem advisable.

(4) The council of the municipal corporation may thereupon enter into a provisional contract with the Commission for the supply of electrical power or energy for the purposes mentioned in this sub.

(5) The provisional contract shall not be binding upon the corporation unless and until a by-law approving the same has been submitted to and has received the assent in accordance with the provisions of The Municipal Act of the electors qualified to vote on money by-laws; and the estimates of the Commission or a summary thereof and a copy of the provisional contract shall be published with or form part of the by-law.

(6) After the provisional contract has received the assent of the electors and has been executed by the corporation and approved by the Lieutenant-Governor in Council the Commission may carry out and execute the same and shall have power and authority to do all acts necessary for that purpose.

(7) Where a municipal corporation which has not heretofore entered into a contract for a supply of power applies for such supply, and a question has been submitted to the vote of the electors of the municipality in accordance with the provisions of The Municipal Act as to a supply of electric power from the Commission, and the electors have voted in favour of a supply from the Commission, the council of the corporation of such municipality may authorize the entering into and such corporation may enter into a contract with the Commission in such form as may be approved by the Lieutenant-Governor in Council without submitting a by-law approving the same for the assent of the electors as provided by subsection 5, and when executed such contract shall be legal, valid and binding."

R.S.O.,1914,c.39,s.18, part.



2. Historical Sketch

Section 17 has not been amended since 1907; section 18 has not been amended since the revision of the Statutes in 1914.

The original Act of 1906 contained a provision with regard to the submission of estimates and the passage of by-laws pursuant thereto in the following terms:

6. "Any municipal corporation may apply to the Commission for the transmission to such corporation of electrical power or energy for the uses of the corporation and the inhabitants thereof, for lighting, heating and power purposes, and the Commission may thereupon furnish to such municipal corporation estimates of the cost of constructing, erecting,

installing and maintaining all such buildings, works, plant, machinery, poles, wires, conduits and other structures as may be necessary for the purpose of supplying the amount of electrical power or energy required by such municipal corporation and may also furnish to such corporation plans and specifications of the works, plant, machinery and appliances necessary for the distribution of such power and energy by such municipal corporation, together with an estimate of the cost thereof. The Commission shall further furnish to such municipal corporation a statement of the terms and conditions upon which such electrical power or energy may be transmitted and supplied, together with a form of the contract to be entered into between such municipal corporation and the Commission.

Provided that neither the Commission nor the Province of Ontario shall incur any liability to any municipal corporation or company by reason of any error or omission in any such plans, specifications, or estimates." 1906, c.15,s.6.

7. "The council of such municipal corporation may submit to the electors of the municipality in the manner prescribed in The Consolidated Municipal Act, 1903, a by-law authorizing the municipal corporation to enter into such contract and in case such by-law receives the assent of the majority of the electors voting thereon, such contract may be entered into and executed by the Commission and the municipal corporation, subject to the approval of the Lieutenant-Governor in Council." 1906, c.15,s.7.



It is apparent that the importance of the submission of estimates and specifications was emphasized in the original Power Commission Act.

Sections 6 and 7 of the Act of 1906 were repealed with the other provisions of that Act when the new Power Commission Act was passed in 1907. Their spirit was preserved, however, in Sections 12, 13 and 24 of the new Act.

12. "Any municipal corporation may apply to The Commission for the transmission and supply to the corporation of electrical power or energy for the use of the corporation and the inhabitants of the municipality for lighting, heating and power purposes or

for any or either of such purposes or for any of the purposes mentioned in section 14, and The Commission shall thereupon furnish to the corporation a statement of the maximum price per horsepower at which the electrical power or energy will be supplied at the point of development or of its delivery to The Commission and an estimate of the cost of constructing or providing a transmission line by means of which the amount of electrical power or energy required by the corporation is to be supplied and of maintaining the same, and may furnish to the corporation plans and specifications of the works, plant, machinery and appliances necessary for the distribution of such power or energy by the corporation and an estimate of the cost thereof, and such other information as The Commission may deem advisable. The Council may thereupon enter into a provisional contract with The Commission for the supply of electrical power or energy for the purposes mentioned in this Act."
1907, c.19, s.12.

13.-(1) "The provisional contract shall not be binding upon the corporation unless and until a by-law approving the same has been submitted to and has received the assent in accordance with the provisions of The Consolidated Municipal Act, 1903, of the electors qualified to vote on by-laws for creating debts, and the estimates of The Commission or a summary thereof and a copy of the provisional contract shall be published with or form part of the by-law.

(2) "After the provisional contract has received the assent of the electors and has been executed by the corporation and approved by the Lieutenant-Governor in Council, The Commission may carry out and execute the same and shall have power and authority to do all acts necessary for that purpose."
1907, c.19, s.13.

24. "Neither the Province nor The Commission nor any member thereof shall incur any liability by reason of any error or omission in any estimates, plans or specifications prepared or furnished by The Commission."
1907, c.19, s.24.

It is to be noted that the enactments of 1906 and 1907 are very similar. The latter is somewhat stronger in that it provides for the execution of a provisional contract as a condition precedent to the submission of the by-law. Upon the sub-

mission of the by-law "the estimates of the Commission or a summary thereof and a copy of the provisional contract shall be published with or form part of the by-law". The inference to be drawn from these changes is that the Legislature intended to make the estimates a condition of the contract to the extent of leaving the way open for municipalities to seek redress for errors in estimates, although the manner and means of the redress is not clear on account of Section 24.

Sections 12 and 13 of the Act of 1907 were amended, as to form, in 1914, and appear in the present law, in the same terms, though in different form, as Subsections (1), (3), (4), (5) and (6) of Section 18.



In 1909, the following Section was passed to meet special circumstances that had arisen in connection with the contract between the Commission and the municipal corporations of Toronto, Hamilton, et al.

> 11. "Where a municipal corporation not a party to the contract set forth in Schedule A, as varied by this Act applies for a supply of power and a question has been heretofore or is hereafter submitted to the vote of the electors of the municipality pursuant to paragraph 1a of section 533 of The Consolidated Municipal Act, 1903, and the amendments thereto, including the amendment made during the present session as to a supply of electric power from the Commission and the electors have voted in favour of a supply from the Commission, the council of the corporation of such municipality may authorize the entering into and such corporation may enter into a contract with the Commission in the form set forth in the said schedule or with such variations thereof as may be approved by the Lieutenant-Governor in Council, without submitting a by-law approving the same for the assent of the electors as provided by sub-section 1 of section 13 of The Power Commission Act, and when executed such contract shall be legal, valid and binding." 1909, c.19,s.11.

The provision of The Consolidated Municipal Act, 1903, referred to, reads as follows:

> 533. "By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:
> 1a. "For providing for the submission to a vote of the electors at any annual municipal election of any question not specifically authorized by law; for determining whether such questions shall be voted upon by the municipal electors generally or by the electors qualified to vote on a by-law for the creation of debts only, and for prescribing the procedure to be taken for such vote."
> 1903, c.19,s.533, part.

This Section with certain amendments to make it of general application was incorporated with Sections 12 and 13 of the Act of 1907 in Section 16 of the revision of 1914 and appears therein, and still remains, as Subsection (7).



3. Comment

It is clear from the Historical Sketch that Section 16 as it now stands contemplates two distinct lines of procedure relating to the negotiation of power contracts between the municipalities and the Commission.

The first six Subsections (originally 1907, c.19, secs. 12 and 13), contemplate an application for power by the municipal council to the Power Commission without the submission of any question to the electors. Thereupon the Power Commission furnishes a statement of the maximum price per horse-power, the estimated cost of distribution system, etc., pursuant to which the council may enter into a provisional contract. This provisional contract, however, is not binding upon the municipality until a by-law setting out the estimates and the terms of the provisional contract has been submitted to and received the assent of the electors.

The problem of the constitutional validity, then, refers to, again as follows:

> Qu'l. "By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:
> 1b. For protecting the water resources in a case by the elsewhere as may seem necessary minimum of the interests and especially considering by law the interpretation water such questions shall be taken upon by the municipal and generally or by the elsewhere municipal in view of the by-law for the operation of water, and for prescribing the procedure to be taken for such purpose." 1900, c.19,s.208, part.

This section also merely authorizes or makes it a penal application was interpreted with respect to and in or the law of 1907 in relation to the matters of life and property, commerce, and civil rights, in Cushing v.

3. Conclusion

It is clear from the historical issues that water is as it was already accompanying the distinct line of precedent relating to the authorization of power companies between the municipalities and the Dominion.

The Privy Jan Committee Judicially Lord, said, here, in not 13), distinguish an application for power by the municipal council to the power company without the authorization of the province in the province. Therefore the Power Commission therefore a statement of the position after hydroelectric. The authorized use of hydroelectric signed, Jr., pursuant to which the property may enter a provincial matter. This constitutional authority, matter, is not stated upon the municipality until a by-law exists and the authority and the power of the provincial authorities has been adopted in and repealed the powers of the electric.

The less cumbersome "short cut" method is that provided by Subsection 7 as first enacted in 1909, (c.19,s.11) to meet the exigencies of a special case, and amended to give it general application in 1914. Where the application for power is made by a municipality not already under contract with the Power Commission, and a question has been submitted to the electors as to a supply of power and answered in the affirmative, the council of the municipality may conclude a binding contract, subject to the approval of the Lieutenant-Governor in Council, without the further submission of any by-law or the publication of any estimates.

The important difference between the two methods, to which attention is drawn, is that the first and original procedure requires that "the estimates of the Commission or a summary thereof and a copy of the provisional contract shall be published with or form part of the by-law"; the summary procedure involves neither the submission of estimates nor contract to the electors.



So far as has been ascertained, the original procedure has never been employed since the authorization of the second procedure fourteen years ago.

In this connection, and as a matter of strict legal interpretation, it is to be pointed out that the provisions of The Consolidated Municipal Act referred to (1903,c.19,s.533,par.1a.quoted above; later R.S.O. 1914,c.192,s.398,par.10; and now 1922,c.72, s.398,par.10) provides only for "submitting to the vote of the electors of any municipal question not specifically authorized

by law to be submitted", and inasmuch as subsection 5 of section 18 specifically authorises the submission of the question of a contract for a supply of power to the electors, it is difficult to understand the validity of such a submission under the provisions of The Consolidated Municipal Act.

It is suggested that the Act be amended so as to clearly define one uniform course of procedure for contracts with municipal corporations.

# BORROWING POWERS

1. Present Law

A. Under the Power Commission Act

(1) The Lieutenant-Governor in Council may:

(a) Borrow money under the Provincial Loans Act for the general purposes of the Commission.

> 14. "The Lieutenant-Governor in Council may from time to time raise by way of loan in the manner provided by The Provincial Loans Act such sums as the Lieutenant-Governor in Council may deem requisite for the purposes of this Act; and such sums may be paid over to the Commission and shall be accounted for and audited in the manner provided with respect to the management of the public revenue and public accounts."
> 1906,c.15,s.17; 1907,c.19,s.20; R.S.O.1914, c.39,s.14.



(b) Guarantee the payment of any bonds or other securities issued by the Commission and make arrangements for supplying the money necessary to fulfil such guarantees.

> 14c. "The Lieutenant-Governor in Council is hereby authorized, on such terms as may be approved by Order-in-Council, to agree to guarantee the payment of the principal and interest of any bonds, debentures and other securities issued by the Commission, and the form and manner of any such guarantee or guarantees shall be such as the Lieutenant-Governor in Council may approve. The said guarantee or guarantees shall be signed by the Provincial Treasurer or such other officer or officers as may be designated by the Lieutenant-Governor in Council, and upon being so signed, the Province of Ontario shall become liable for the payment of the principal and interest of the bonds, debentures and securities guaranteed according to the tenor thereof, and the Lieutenant-Governor in Council is hereby authorized to make arrangements for supplying the money necessary to fulfil the requirements of the said guarantee

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or guarantees, and to advance the amount necessary for that purpose out of the public funds of the Province, and in the hands of any holder of or of any of such bonds, debentures or securities any guarantee so signed shall be conclusive evidence that the terms of this section have been complied with."
1917,c.20,s.5, part.

(c) Guarantee the performance by the Commission of any covenants of the Commission in connection with the acquisition of shares in incorporated companies.

14d. "The Lieutenant-Governor in Council is hereby further authorized on behalf of the Province of Ontario to enter into any covenants or agreements in connection with the acquisition by the Commission of any shares in any incorporated company and to guarantee the observance and performance by the Commission of any contract or agreement of the Commission in relation to such acquisition."
1917,c.20,s.5, part.



(d) Guarantee the repayment of loans negotiated by the Commission from banks or any other indebtedness incurred by the Commission.

14e. "The Lieutenant-Governor in Council may guarantee the repayment of advances made by banks or any other indebtedness incurred by the Commission, and any Order-in-Council heretofore passed stating that the Government of Ontario does guarantee the repayment of any such advances or indebtedness, shall be legal and valid, and be binding upon the Province of Ontario."
1918,c.14,s.6, part.

(e) Advance funds to the Commission where Legislative appropriation in respect of any work has become exhausted and the Chairman reports the necessity and expediency of proceeding with the work.

of grievances, and in minimum the future mean-
ing for this purpose was of the public funds or
the property, and in the hands of any bailee or
of any of such funds, securities or property any
property so aligned shall be conclusive evidence
that the terms of this section have been complied
with."
1917,s.10,s.5. part.

(c) Secures the performance by the Commission of any

statutes of the Commission in connection with the maintenance

of shares in incorporated companies.

1st. "The limitations-provisions in Canada is
merely further restriction on behalf of the pro-
visos of Ontario to enjoy into any contracts or
agreements in connection with the application of
the functions of any shares in any incorporated
company and to guarantee the observance and
performance by the commission of any contract
or agreement or the functions in relation to
such matters."
1917,s.10,s.6. part.

(d) Guarantees the repayment of funds expropriated or ex-

changed from banks or any other independent institution or

the Commission.

2d. "The limitations-provisions in Canada may
guarantee the repayment of expropriated or
exchanged funds in any other independent institution
in the country, and any trust-in-Canada matters
passed evening that the government of Canada
have guarantee the repayment of any such ex-
changed or independent, shall be legal and valid,
and be minting upon the trustees or bailees."
1917,s.10,s.7. part.

(e) Affects funds in the commission which implicitly affec-

tations in respect of any work has become subsumed and the

Commission reports the necessity and expediency of proceeding

with the work.

24b. "Where the appropriation made by the Legislature for any work of the Commission shall become exhausted in any fiscal year and the chairman reports to the Lieutenant-Governor in Council that it is necessary and expedient that such work shall be proceeded with and that an additional sum is required for that purpose, the Lieutenant-Governor in Council may order a special warrant to be prepared to be signed by the Lieutenant-Governor for the issue of the amount estimated to be required in such fiscal year, and when issued such amount shall be placed by the Treasurer of Ontario to the credit of a special account against which cheques may be issued in favour of the Commission for such amounts as shall be required."
1920, c.18, s.4.

(2) The Commission may

(a) Upon the authority of the Lieutenant-Governor in Council issue bonds or other securities for any of the purposes set out in Clauses (a) to (g) of Section 6, such as the acquisition of distribution plants or shares in development companies.



8h. "Issue bonds, debentures or other securities of the Commission for any of the purposes set out in clauses a to g in such form and containing such terms and at such rate of interest and payable in such manner and at such time or times as the Lieutenant-Governor in Council may determine."
1917, c.20, s.3. part.

(b) Borrow money for its general purposes and issue its own bonds or other securities therefor.

14f. "Subject to the approval of the Lieutenant-Governor in Council, the Commission may borrow money from time to time for the purposes of the Commission and issue bonds, debentures and other securities of the Commission therefor."
1918, c.14, s.6. part.

3. Under The Ontario Niagara Development Acts of 1916-1917, certain special provisions with regard to the financing of works constructed or acquired under these Acts are as follows:

> 4. -(1) "The cost of the construction and maintenance of the works authorized by this Act shall be defrayed out of such money as may, from time to time, be appropriated by the Legislature for that purpose, and the works which may be authorized under Section 3 shall be carried out and constructed as far as possible in such a manner that an appropriation made in any one fiscal year shall not be exceeded by the cost of the work to be carried out in that year.
>
> (2) "The Government may direct the Treasurer of Ontario from time to time to pay over to the Commission out of such sums, any sums which may be required to defray the cost of the works carried on by the Commission under this Act, and all such sums shall be duly accounted for as hereinafter provided." 1916, c.20,s.4.
>
> 9. - (1) "The Commission with the approval of the Lieutenant-Governor in Council may issue bonds, debentures or other securities of the Commission for any of the purposes set out in Sections 3 and 4 and in such form, and containing such terms, and at such rate of interest and payable in such manner and at such time or times as the Lieutenant-Governor in Council may determine.
>
> (2) "Section 14c of The Power Commission Act shall apply to the bonds, debentures or other securities which may be issued by the Commission under the authority of subsection 1." 1917,c.21,s.9.



2. Historical Sketch

Every provision recited above under the heading "Present Law", with the exception of Section 14 of the Power Commission Act, was passed during the years 1916, 1917 and 1918. Section

14 has not been amended as to form since its original enactment in 1906. Section 4 of The Ontario Niagara Development Act was passed in 1916; Clause h of Section 6, Sections 14c and 14d of The Power Commission Act and Section 9 of The Ontario Niagara Development Act, 1917, were enacted in 1917; and Sections 14e and 14f of The Power Commission Act were passed in the year 1918.

3. Comment

Prior to 1917 the Legislature was, in effect, the only source of funds for undertakings of the Commission.

Between 1917 and 1922, inclusive, in the exercise of the borrowing powers enumerated above in respect of the acquisition of The Ontario Power Company, the Queenston-Chippawa Development and other works, the liability of the Province for undertakings of the Commission was largely increased.



There is no doubt that under the provisions recited, and particularly Section 14f, the Commission and the Lieutenant-Governor in Council can, without the approval of the Legislature, pledge the credit of the Province to an unlimited extent. It is submitted that in order to safeguard the interests and the credit of the Province generally and that of the Hydro municipalities in particular, the Act should be amended to require the endorsation of the Legislature to all advances made and obligations assumed by the Province for undertakings of the Commission.

Attention may be here drawn to the effect of Section 24b,

hereinbefore quoted, and to the procedure adopted when applications for the issue of Special Warrants thereunder were made by the Commission.

Prior to the enactment of this section, Special Warrants were issuable only "when expenditure not foreseen or provided for by the Legislature is urgently required for the public good ...and.....there is no Legislative provision therefor", as provided in Section 14 of The Audit Act, R.S.O., chapter 23. By Section 26 of The Audit Act provision was made for the issue of a "Treasury Board Minute", "where an appropriation is exhausted and the public interest or the urgent requirementsof the public service necessitates further payments." An important change in public policy was effected by the passage of Section 24b, if the intention of the section was, as it appears to have been, to authorise the issue of Special Warrants and the expenditure of Provincial moneys, not appropriated by vote of the Legislature, on occasions not contemplated by The Audit Act, and for purposes for which Treasury Board Minutes might have been issued, if public interest or the urgent requirements of the public service necessitated further payments.



The action taken by the Government when the Commission,- as it did from time to time - made application for the issue of Special Warrants pursuant to Section 24b was not in accordance with the section in that it did not issue Special Warrants but passed Treasury Board Minutes, of which no mention is made in the section. To comply with the section, Special Warrants should

Parliamentary Library, and is the precedent suggest more difficulties for the issue of Special Warrants pursuant to Section 32B was not in accordance with the question in that it did not issue Special Warrants but passed Treasury Bond Slowers, or which or question is made in the section. In strict with the section Special Warrants should

Section 32 of the Constitution, "Subject to the Constitution, no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law."

Prior to the commencement of this section, "general-purpose money" is defined in the Constitution as "money appropriated for the purposes of the Commonwealth by a law other than a law imposing taxation or a law dealing with the ordinary annual services of the Government."

Section 32B of the Audit Act provides that "Where an appropriation is authorised by a "Treasury Bond Slower", "Where an appropriation is authorised and the public interest or the urgent requirements of the public service necessitate further expenditure." An important change in public policy was effected by the passage of Section 32B. If the intention of the section was, as it appears to have been, to authorise the issue of Special Warrants and the expenditure of financial moneys, not appropriated by vote of the Legislature, on occasions not contemplated by the Audit Act, and for purposes for which Treasury Bond Slowers might not have issued, if public interest or the urgent requirements of the public service necessitated further expenditure.

The action taken by the Government when the Commission, as it did from time to time - made application for the issue of Special Warrants pursuant to Section 32B was not in accordance with the question in that it did not issue Special Warrants but passed Treasury Bond Slowers, or which or question is made in the section. In strict with the section Special Warrants should

have been issued. For the passage of Treasury Board Minutes no application by the Commission under the section was necessary.

It may also here be noted that, Section 24b not being referred to in The Ontario Niagara Development Acts, it is questionable if it is applicable to applications by the Commission for Special Warrants to meet expenditures in excess of appropriations for the works acquired or constructed under the provisions of those Acts.

# TAXATION

## Municipal Taxation

### 1. Present Law

#### The Power Commission Act

The land, but not the buildings or other improvements, erected thereon, owned by or vested in the Commission, is liable to assessment and taxation for municipal and school purposes.

> 12a. -(1) "Notwithstanding anything in The Assessment Act contained, land owned by and vested in the Commission shall be subject to assessment and taxation for municipal and school purposes at the actual value thereof according to the average value of the land in the locality.
>
> (2) "Subsection 1 shall not apply to or include buildings, machinery, works, structures, substructures, rails, ties, poles and other property, works or improvements owned, used or controlled by the Commission, nor an easement or the right of use or occupation or other interest in land not owned by the Commission, but all such buildings, machinery, works, structures, substructures, superstructures, rails, ties, poles and other property, works or improvements owned, used or controlled by the Commission, and every such easement or right, shall continue to be exempt from assessment and taxation as heretofore." 1917, c.20, s.4. new.



#### The Assessment Act

The Assessment Act contains a similar provision with respect to the land and property of the local Hydro Commissions or other bodies representing municipal corporations.

> 45a -(1) "Land owned by or vested in a municipal corporation or commission or in trustees or any other body acting for and on behalf of a municipal

# P A R A G R A P H

## Proposed Statutes

### 1. Expropriation

#### The Power Commission Act

The Act, but not the building or other improvements, erected thereon, owned by or rented to the Commission, is liable to taxation and exemption for qualified non-resident purposes.

Sec. -(1) "Notwithstanding anything in the Lands-Clauses Consolidation Act, land which by not vested in the Commission shall be subject to expropriation and taxation for municipal and national purposes if the actual value thereof exceeds in the aggregate one-ninth of the land in the Province.

(2) "Subsection 1 shall not apply to or in-clude buildings, machinery, works, structures, rail-ways, roads, piles and other property, used or improvements owned, used or constructed by the Commission, nor to property by the right of use or occupation or other interest in land not owned by the Commission, but all such buildings, machinery, works, structures, railways, roads, piles and other property, used or occupied by the Commission, shall continue to be exempt from taxation and remain as heretofore," 1927, s.10, s.s. 2(2).

#### The Amendment Act

The Amendment Act consists of a similar provision with respect to the land and property of the Lower Fraser Commission.

### 2. Expropriation

Sec. -(1) "Land owned by or vested in a municipal corporation or municipality or in trustees or any other body corporate for and on behalf of a municipal

corporation and used for the purpose of supplying water, light, heat or power to the inhabitants of the municipality, or for the purposes of a railway, electric railway, street railway or tramway shall be liable to assessment and taxation for municipal and school purposes in the municipality in which it is situate at its actual value, according to the average value of land in the locality.

(2) "Subsection 1 shall not apply to or include a highway, street, lane or other public place, nor shall it apply to or include buildings, machinery, works, structures, substructures, superstructures, rails, ties, pipes, poles and other property, works, or improvements, owned, used or controlled by such municipal corporation, commission, trustee or other body, nor an easement or the right of use or occupation or other interest in land not owned by such municipal corporation, commission, trustee or other body, but every such highway, street, lane or other public place, and all such buildings, machinery, works, structures, substructures, superstructures, rails, ties, pipes, poles and other property, works or improvements so owned, used or controlled, and every such easement or right shall continue to be exempt from assessment and taxation as heretofore."
1918, c.20, s.39.



Except as provided in Section 45a, the property of all counties, municipalities and public commissions wherever situate within the Province is exempt from assessment and taxation.

5. "All real property in Ontario and all income derived either within or out of Ontario by any person resident therein, or received in Ontario by or on behalf of any person resident out of the same shall be liable to taxation, subject to the following exemptions;

7. "Except as provided in Section 45a, the property belonging to or leased by any county or municipality or vested in or controlled by any public commission wherever situate and whether occupied for the purposes thereof or unoccupied; but not when occupied by a tenant or lessee."

1892, c.48,s.7,par.7; R.S.O. 1897,c.224,s.7,par.7; 1904, c.23,s.5,par.6 amended; 1913, c.46,s.3 amended; R.S.O. 1914,c.195,s.5,par.7 reenacted and amended; 1917, c.45,s.2 amended; 1918, c.20, s.37.

2. Historical Sketch

Ever since 1892 (c.48,s.7), and probably earlier, the property belonging to municipal corporations, not occupied by a tenant or lessee, has been exempt from assessment or taxation. In 1913, the Act was amended to include the property of any "public commission" within the exemption:

> 5. "All real property in this Province and all income either within or without of this Province by any person resident therein, or received in this Province by or on behalf of any person resident out of the same shall be liable to taxation, subject to the following exceptions, that is to say:
>
> 6. "The property belonging to any county or municipality <u>or vested in or controlled by any public commission wherever situate</u>, whether occupied for the purposes thereof or unoccupied; but not when occupied by any person as tenant or lessee."
> 1904, c.23,s.5,par.6; 1913, c.46,s.3 -underlined words added. R.S.O. 1914,c.195,s.5,par.7 - re-enacted with addition doubly underlined words.



The only amendment made by the revision of 1914 was to make it clear that the exemption was to apply to such property "wherever situate".

Hence, prior to 1917, all the property of the Power Commission and the local commissions - all the undertakings of the Commission - were exempt from taxation. In 1917, section 12a of The Power Commission Act (ante) repealing the exemption so far as the land of the Power Commission was concerned, was

1921. n.22.s.7.par.7; R.L.R. 1921,c.324,s.7,par.7;
1924, c.213,s.2,par.2 amended; 1929, s.10.c.2 repealed;
1927, c.214,sch.s.5,par.7 repealed and substituted;
1937, s.18.c.2 amended; 1939, s.23, c.27.

3. Statutory Duties

Over since 1921 [s.22,c.7], and previously under, the property belonging to municipal corporations, not situated by a canal or lateral, has been exempt from assessment and taxation. In 1929, the act was amended to include the property of any "public municipal" within the municipalities.

> 3. All real property in this province and all income either within or without or which derived by any person resident therein, or received in this province by or on behalf of any person residing out of the province shall be liable to assessment, subject to the following exemptions, that is to say:
>
> 6. The property belonging to any society or municipality or trustee in municipality or in municipality or the public municipalities whatever situate, erected for the purposes temporary or permanent or occupied but when occupied by any person or persons or person.
>
> 1924, c.24,s.5,par.4; 1929, c.42,s.2 -municipal years added. 1.c.c. 1929,s.10,s.5,par.7 - re-enacted with multiple double consolidated works.

The only amendment made by the revision of 1934 was to make it clear that the exemption was to apply to such property "whatever situate".

Since, prior to 1927, all the property of the Power Commission and the Canal Commissions - all the undertakings of the Commission - were exempt from taxation. In 1927, exemption of the Power Commission and lateral supplying the municipalities in the land of the Power Commission was reserved, and

passed; at the same time, the words "or leased by" were added to paragraph 7 of Section 5 of the Assessment Act; and in 1918 Section 45a was enacted which repealed the exemption as to the land of the local Commissions also.

3. Comment

It is clear that all the undertakings of the Commission, including the property of the local municipal Commissions, are exempt from assessment and taxation except for the land "owned by and vested in" the Power Commission, or in the municipal corporation or some body acting for and on behalf of the municipal corporations. There is some doubt, however, as to the applications of the law to the railway undertakings of the Commission and to companies such as The Ontario Power Company where the capital stock is owned by the Commission.



There is no provision in any of the Hydro Railway Acts respecting taxation. The Guelph Radial Railway and the Sandwich, Windsor and Amherstburg Railway and the Windsor and Tecumseh Electric Railway are being treated as though they were within the exemptions described in The Power Commission Act and the Assessment Act. It is suggested that if the principle of the present exemptions be confirmed, the Railway Act should be amended to make specific provisions with regard to railways operated by the Commission. In any event, it should be made clear that the provisions of The Power Commission Act relate only to the Power undertakings of the Commission.

The other point to be noted - and these remarks apply to the Railway companies mentioned - is that Section 12a does not contemplate the control by the Commission of companies such as The Ontario Power Company. It cannot be said that the land of The Ontario Power Company is "owned by and vested in the Commission" within the meaning of that section. A similar situation will arise wherever the corporate existence of any company is continued after its acquisition by the Commission.

Provincial Taxation

1. Present Law

The Corporations Tax Act, which provides for the payment of certain Provincial taxes by insurance, railway and other companies, does not apply to railways and electric works owned and operated by a municipal corporation.



> 3. "This Act shall not apply to railways, street railways, gas, electric or telephone works owned and operated by a municipal corporation, whether operated directly by the corporation or by a Board or Commission."
> R.S.O. 1914, c.27,s.3.

2. Historical Sketch

The above section was enacted in its present form in 1908, (c.14,s.3), but prior thereto it would appear that the Province has never seen fit to tax the property of a municipal corporation.

3. Comment

It would seem a rather broad interpretation of Section 3

The other point to be noted - and where measures apply to the factory employing workmen - is that they protect the lives and safeguard the health of the thousands of employees in the Ontario Power Company. It cannot be said that the lives of the Ontario Power Company is "saved by one having in the elevator" giving the warning at that moment. A similar situation will arise whenever the corporate existence of any employer is questioned after the notwithstanding of the employee.

Criminal Liability

1. Section 144

The Corporation Act provides for the punishment or penalties imposed upon by Ministerial, Railway and other companies, does not apply to railways and electric power and operated by a municipal corporation.

> 1. "This act shall not apply to railways, street railways, gas, electric or telephone works owned and operated by a municipal corporation, unless specially exempted by the corporation or by a vote of the Municipal."
> R.S.O. 1914, c.27;s.3.

2. Criminal Charge

The same analysis was omitted in the previous case in 1906, (c.14,s.2), but prior thereto it would appear that the Criminal Law Amendment Act in the 19th Parliament of a municipal corporation.

3. Summary

It would seem a rather broad interpretation of Section 3

of the Act quoted above to apply its provisions to all the power and railway undertakings of the Commission including companies operated as distinct entities, such as The Ontario Power Company.

of the air lanes above to supply the provisions to all the power and relief manpowerhour of the Commission facilities manpower operated at airline matters, such as the Defense Power Company.

## O W N E R S H I P

The Power Commission Act does not expressly declare upon what trusts the Commission shall hold the works, equipment and other property and rights, acquired or constructed by it under the authority of the Act, nor does it make any express provision in respect of the future beneficial ownership of these works and properties.

Section 22 of the Act, passed in its present form in 1918, provides:

> "The expenditure of the Commission upon any works undertaken under the provisions of this Act for the benefit of any municipality or municipalities which have entered into contracts with the Commission shall be repayable to the Commission by such municipality or municipalities."
> 1918, c.14, s.10.



Prior to 1918 the corresponding section of the Act read as follows:

> "The expenditure of the Commission upon any works undertaken under the provisions of this Act, shall be repayable to the Commission by the Municipal Corporations, which have entered into contracts with the Commission."

The full title of the Act, "An Act to provide for the Transmission of Electrical Power to Municipalities", taken in connection with the last quoted section indicates that the Legislature originally intended that the cost of all works undertaken by the Commission under the provisions of the Act would be repaid by municipal corporations which have entered into contracts with the Commission whether these works were undertaken for the benefit

## APPENDIX I

The Swazi Commission not have any comparably useless type were where the Commission shall hold the water, rights and other property and rights, subject or associated by it under the authority of the act, can case it make any objection practice in respect of the Swazi Government ownership of land water and property.

Section 20 of the Act, passed in the Swazi Code in 1968, provides:

> "The expenditure of the Commission upon any water undertaken under the provisions of this act for the benefit of any municipality or municipalities which have entered into contracts with the Commission shall be repaid to the Commission by such municipality or municipalities."
> 1910,c.12,s.10.

Prior to 1968 the corresponding section of the Act read as follows:

> "The expenditure of the Commission upon any water undertaken under the provisions of this Act, shall be repaid to the Commission by the Municipal Corporation, which have entered into contracts with the Commission."

The full title of the Act, "An Act to provide for the Commission of Government Loans to municipalities", taken in conjunction with the Swazi Code indicates that the legislature originally intended that the cost of all water undertaken by the Commission under the provisions of the Act would be repaid by municipal authorities which have entered into contracts with the Commission under these water undertakings for the benefit

of these municipal corporations or for supplying railway companies, distributing companies or any other corporations or persons, with whom the Commission was authorized by the Act, subject to the approval of the Lieutenant-Governor in Council, to contract for a supply of electrical power. It would naturally follow that upon repayment of this cost by the municipal corporations the works would be vested in, or held for, them as beneficial owners thereof. Pending repayment, however, the works acquired and constructed by the Commission should be regarded as held by the Commission as security for the moneys advanced to and expended by the Commission. The municipal corporations could receive benefit from profits made upon contracts for power with others than themselves, as the Act directs that the net profits from those contracts "shall be applied in payment of the cost of maintaining the works acquired or constructed and operated by the Commission." (Sec. 21). No provision is made for losses upon such contracts, but these naturally would fall upon the municipal corporations as they would be incurred in operation of the works.



When Section 22 was passed in 1918 and the liability of municipalities for repayment was limited to expenditures of the Commission upon works undertaken for their benefit, no provision was made for repayment of expenditures on works for the supply of power to others than municipal corporations who have entered into contracts with the Commission. Advances have been made and liabilities assumed by the Province in respect of these works; profits may be made or losses may be incurred from their

of those municipal corporations or for supplying water, constructing, distributing commodies or any other corporation or persons, with whom the Commission was authorized by the act, subject to the approval of the Lieutenant-Governor in Council, to contract for a supply of electrical power. It would seem that if this right of appeal by the municipal corporations the value would be vested in, or held for, them as beneficial owners thereof, further expenses, however, the water supplied and distributed by the Commission should be expected to pay by the Commission so actually for the storage advanced to and expended by the municipal corporations which receive benefit from profits made upon entering for power-that's then electricity, as the act directs that the net profits from these undertakings "shall be applied in payment of the cost of maintaining the works acquired or constructed and operated by the Commission." (Sec. 23). No provision is made for issues upon such contracts, but there would certainly again fall upon the municipal corporations on whom would be assessed an operation of the works.

That Ontario is now passed in life and the liability of municipalities for expenses was limited to expenditures of the Commission upon works undertaken for their benefit, no provision was made for payment of expenditures on works for the supply of power to others than municipal corporations due to a mistake like contracts with the Commission. Commons have been made and liabilities assumed by the trustees to support of those works payable only or mere or issues may be incurred from their

operation. It were well to determine by Statute the rights and liabilities in respect of these works.

One of the terms of the usual form of agreement entered into between the Commission and municipal corporations is as follows:

> "It is hereby declared that the Commission is to be a trustee of all property held by the Commission under this agreement for the Corporation and other Municipal Corporations supplied by the Commission, but the Commission shall be entitled to a lien upon said property for all moneys expended by the Commission under this agreement and not repaid. At the expiration of this agreement the Commission shall determine and adjust the rights of the Corporation and other Municipal Corporations, supplied by the Commission, having regard to the amounts paid by them respectively, under the terms of this agreement, and such other considerations as may appear equitable to the Commission and are approved by the Lieutenant-Governor in Council."



The agreements generally, if not universally, have been confirmed and ratified by Statute and have therefore the validity of Statutory enactments. The wording of the clause is substantially adopted to form Section 6 of The Ontario Niagara Development Act, 1917.

> 6- (1) "It is hereby declared that the Commission is to be a trustee of all the works constructed or acquired under the authority of this Act for the municipal corporations which have heretofore entered or may hereafter enter into contracts with the Commission for a supply of electrical power or energy from Niagara Falls or the vicinity, but the Commission shall be entitled to a lien upon the said works until all sums expended by the Commission on account of the construction and equipment of such works have been paid.
>
> (2) "Upon the payment of the amounts expended by the Commission upon the construction and equipment of the works, the Commission shall determine and adjust the rights of the municipal corporations, having regard to the amounts paid by them respectively, and such other considerations as may appear equitable to the Commission and are approved by the Lieutenant-Governor in Council."

1917, c.21, s.6.

operation. It was well to determine by letter the rights and liabilities in respect of these cases.

The 4th issue of the Canal Zone of Panama-Colombia Law between the Commission and American merchant ships in Colombia:

"It is hereby declared that the Commission is a trustee of all property held by the Commission under this agreement for the Government and other Panama Canal users supplied by the Commission, but the Commission shall be entitled to a lien upon such property for all moneys expended by the Commission under this agreement and not repaid. In the exercise of its agreement the Commission shall determine and adjust the rates of the Corporation and other Panama-Colombia, supplied by the Commission, being repaid to the amounts paid by them respectively, under the terms of this agreement, and such other conditions as may appear equitable to the Commission and are approved by the Interoceanic-Colombia Council."

The agreements generally, if not universally, have been modified and notified by treaties and have therefore the validity of treatory agreements. The wording of the clause is substantially adopted in Para Section 5 of the Panama Diagram Development Act, 1917.

5. (1) "It is hereby declared that the Commission is to be a trustee of all the works constructed or acquired under the authority of this act for the multiple purposes which have hereinbefore mentioned or any Canal-Colombia Works Line constructed with the Commission for a supply or electrical power or energy from Diagram Pala or the vicinity, but the Commission shall be entitled to a lien upon the said works until all sums expended by the Commission in excess of the revenues and payments of such works have been paid.

(2) "Upon the payment of the sums expended by the Commission upon the aforesaid and payment of the sums, the Commission shall determine and adjust the rights of the municipal corporations, having regard to the sums paid by them respectively, and such other considerations as may appear equitable to the Commission and are approved by the Interoceanic-Colombia Council."

1917, 7, 8, 9.

A difference to be noted between the clause of the agreement and the section of the Act is that in the former the rights of the municipal corporations are to be determined and adjusted at the expiration of the agreements, and in the latter upon payment of the amounts expended by the Commission. This difference is a material one in view of the fact that at the expiration of all, or of the majority of the agreements, the expenditures will not have been fully repaid, but the municipal corporations notwithstanding this will be entitled to a proprietary interest in the property included in the agreements with them, in proportion to the amount contributed by them towards repayment. In the case of works constructed or acquired by the Commission under The Ontario Niagara Development Act, no right of ownership accrues to the municipalities until payment of the full amount expended thereon by the Commission. In both cases the declaration that the Commission is a trustee for municipal corporations and is entitled to a lien until repaid its expenditures is equivalent to a declaration that the Commission retains possession and title to the property, subject to the right of municipalities to a proprietary interest therein, in certain proportions under defined circumstances. In the case of works acquired or constructed for the benefit of municipalities under The Power Commission Act, there is a statutory liability upon the municipalities to repay the expenditures of the Commission, while there is no similar statutory obligation in the case of works acquired or constructed under the provisions of

A difference so to be drawn between the status of the state-owned and the private oil in that in the former the rights of the municipal corporations are to be determined and adjusted at the discretion of the government, and in the latter upon payment of the amount imposed by the legislature. This difference is a material one in view of the fact that as the exploitation of oil, or of the majority of the deposits, the companies will not have been fully informed, but the municipal corporations notwithstanding this will be entitled to a property interest in the property included in the concession with them, in proportion to the amount contributed by them towards the work undertaken. In the case of the oil rights contributed or acquired by the Commission under the Natural Resources Development Act, as right of ownership accrues to the municipalities until payment of the full amount expended thereon by the Commission. In both cases the contention that the concession is a matter for municipal consideration and is entitled to a fair share in a substantial interest in a property interest arises in relation to a dispensation that the Commission exercise jurisdiction and control in the property. Rights in the private development and study in the property, matters in the right of municipalities to a proportionate interest arise. In certain properties under Indian circumstances. In the case of which required or necessitated for the benefit of municipalities under the Indian Government Act, there is a strongly justified upon the municipalities to expect the consideration of the Government, while there is no similar statutory obligation in the case of those developed or exploited under the provisions of

The Ontario Niagara Development Act. The position of municipalities in the one case is analogous to that of a purchaser who has entered into a binding agreement to purchase a property, and the other to that of a proposing purchaser who holds an option to purchase. Pending payment of the purchase price, the title of the property and the vendor's lien thereon for the purchase money is vested in the Commission, not as beneficial owner thereof, but on behalf of the Province and as security for the advances made or liability assumed by the Province for the payment of the cost of the acquiring or constructing the property.



The only method provided by The Power Commission Act for repayment by municipalities of the expenditure of the Commission upon works under that Act for their benefit, or in other words, the terms of payment of the purchase price of those works, are set out in Section 23 of the Act. As part of the cost of power, a municipal corporation which has entered into a contract with the Commission for a supply of power at cost, is required to pay to the Commission its proportion of an annual sum sufficient to form in thirty years with interest at four per cent. per annum a sinking fund for the repayment of the advances made by Ontario for the repayment of the cost of the works. Where payment of the cost of the works was made from advances by the Province for that purpose and there has been paid by municipal corporations interested, before the expiration of their agreements, an amount on sinking fund account sufficient, with interest, to repay those advances, no difficulty need arise in vesting in the

municipalities in proper proportions full ownership of the works and divesting the Province from all interest therein. As, however, the Commission has adopted the policy of relieving, as it is authorized to do, municipal corporations from payments on account of sinking fund during the first five years of the term of their contracts, and which term, in most cases, is a period of thirty years or less, it is evident that the sinking fund accumulated at the expiration of these contracts will be insufficient for the repayment of the advances made by the Province and that full ownership of the works cannot be vested in the municipalities. Extensions and improvements may be made to the works during the term of the contracts. Annual payments for the purpose of providing a sinking fund on a thirty-year basis for repayment of advances made by the Province for payment of the cost of those extensions and improvements, especially when the Commission relieves the municipal corporations from payments on this sinking fund account for the first five years after the expenditure has been made for those extensions and improvements, will, at the expiration of the contracts, fall far short of being sufficient to repay the advances made by the Province, and the rights of ownership of the works acquired by the municipalities will be proportionately less. The Commission, under the agreements, will retain a lien for the portion of its expenditure not repaid at their expiration. This lien will, or should, enure to the benefit of the Province

as security for the balance not repaid to it. The Act contains provision neither for release of this lien nor procedure for enforcing payment by the municipalities of the balance of expenditures upon the works.

The situation in regard to works and properties not included in agreements between the Commission and municipal corporations for supply of power at cost is even more unsatisfactory and calls for clarification by legislation.

The present or future ownership of works and other property employed in or in connection with the transmission and distribution of electric power to consumers in the so-called Essex and Thorold Systems, and to other consumers, who are not supplied on a "power at cost" basis, and of the shares of capital stock of The Ontario Power Company and other corporations is not defined by The Power Commission Act. The Act makes no provision for the establishment of sinking funds for the repayment of advances made by the Province or as security for obligations assumed by the Province for payment of the cost of these works and properties. Sinking funds have in fact been established by the Commission in respect of the cost of acquisition or construction of some, if not all, the works and properties operated by the Commission, but there is no statutory obligation on the Commission to establish sinking funds in respect of other than those included in agreements with municipal corporations being supplied with power on a cost basis. The Commission, it is understood, has taken the position that there is no obligation upon it to invest payments made on sinking fund account, other than those

received as part of the annual cost of power to contracting municipal corporations, in Provincial securities and to deliver these securities to the Treasurer of Ontario.

Section 15(1) of The Power Commission Act is as follows:

> "All sums received by the Commission from municipal corporations and others on sinking fund account shall be invested by the Commission in securities of the Province of Ontario, and also all interest accruing thereon; and such securities shall be delivered by the Commission to the Treasurer of Ontario as security for repayment of the advances made by the Province to the Commission."

If the position taken by the Commission, as above mentioned, be in accord with the intention of the Legislature, Section 15(1) would seem to require such amendment as would remove doubt. If the section were intended to apply generally, as the wording clearly indicates, it is suggested that The Power Commission Act be amended by adding a section to precede Section 15, to the following effect:



(1) "The Commission shall apportion and set aside out of the revenues of each of the works, undertakings and companies acquired, constructed or controlled by it, under the provisions of this Act, an annual sum sufficient to form in thirty years with interest at four per cent. a sinking fund for the repayment of advances made, and for the retirement of securities guaranteed, or assumed, by the Province for the payment of the cost of the works, undertakings and companies so acquired, constructed or controlled.

(2) "Subject to the approval of the Lieutenant-Governor in Council, the Commission, for a period not exceeding five years from the date of the acquisition or construction of works and undertakings controlled and operated by it, may defer the date upon which the apportionment and setting aside annual sums on account of such sinking funds shall commence."

A section in similar terms might be added as an amendment to the Ontario Niagara Development Act.

As in the case of works and equipment acquired or constructed for the supply of power to others than municipal corporations which have entered into "power at cost" contracts, the revenues may not be sufficient to provide for credits to sinking fund reserves, deficits incurred by such credits must be met from some source. These works being connected with the works of one or other of the "systems", as defined by The Power Commission Act, deficits thus arising might well be met out of the contingency reserve on the respective systems, as was done in the year ending October 31st, 1922, with losses sustained on contracts with companies in the Niagara System. On the other hand, net profits in such cases might properly be credited to contingency reserves of the respective systems.



Provision thus being made for the eventual repayment of Provincial advances and the release of obligations on securities guaranteed or assumed by the Province by means of accumulated sinking fund reserves, the Province would have more satisfactory security than at present for moneys advanced and obligations assumed for the benefit of parts of the Province. Pending complete payment and release from obligation, it seems but right that the Acts, under which the several works have been acquired or constructed with Provincial moneys or on the credit of the Province, should declare that the Province is beneficial owner of these several works and of any liens thereon reserved to the Commission by Statute or otherwise subject to the vesting of such

beneficial ownership or of interests therein in the municipalities served by the works in proportion to their respective contributions to sinking fund reserves with accumulated interest thereon.

It is suggested that The Power Commission Act be amended by adding thereto:

> "It is hereby declared that all the works, undertakings and companies acquired, constructed or controlled by the Commission under the authority of this Act and the cost whereof has been paid from advances made by the Province of Ontario or by securities guaranteed or assumed by the Province, are held by the Commission as security for the repayment of such advances and release of the Province from obligations under its guarantees and that upon repayment of such advances and release from such obligations, the Commission shall determine and adjust the rights of municipal corporations served by such works, undertakings and companies and apportion amongst them the ownership thereof, having regard to the amounts paid by them respectively and such other considerations as may appear equitable to the Commission and are approved by the Lieutenant-Governor in Council."



A section in similar terms should be substituted for Section 6 of The Ontario Niagara Development Act, 1917, to produce uniformity in security to the Province and in title and present and future ownership of all the power undertakings of the Commission.

It is submitted that the statutory amendments hereinbefore suggested are not of a drastic nature and do not in any material respect alter the conditions generally understood to now exist, but merely define and determine by Legislative enactment the respective rights and liabilities of the Province, the Commission and municipalities which have entered into "power at cost" con-

artificial rivalry or of internal tensions in the municipality as served by the water in preparing an ever requisite constitutive giving to visiting that vessels with permanent inherent interest.

It is anticipated that the final consideration can be answered by saying therefore:

"If an energy analysis that all the water, sanitation and complaint equipment, structures is supplied by the Commission under the authority of this Act and the next harvest has been paid from advances made by the Treasury of Canada or by municipal guarantees or assume by the provinces, are held by the Commission as security for the repayment of such advances and balance of the Treasury from obligations under its guarantees and that upon repayment of such advance and raises from such obligations, the Commission shall therefore and notwithstanding the rights of municipal corporations served by Each water, sanitation and equipment and operation under the authority thereof, having regard to the amounts paid by that respectively and such other considerations as may appear equitable to the Commission and are approved by the Lieutenant-Governor in Council."

A section in similar terms should be substituted for Section 6 of the Canada Energy Development Act, 1981 to produce uniformity in security to the Treasury and in title and prevent non Crown ownership of all the power generating of the Commission.

It is suggested that the statutory maximum borrowing authorities are not of a drastic nature and do not in any material respect after the constitution temporarily authorized in new cases, but merely define and determine by legislative enactment the respective rights and liabilities of the Province, the Commission and municipalities which have entered into "power or cost" agreements.

tracts, in respect of the works and undertakings acquired, constructed and operated for the benefit of those municipalities, and in respect of expenditures made in acquiring and constructing these works and undertakings.

The amendments suggested on the foregoing pages may be summarized as follows:

1. Present Ownership

The Power Commission Act and The Ontario Niagara Development Act to be amended so as to definitely declare that the several works, equipment, plant, supplies, properties and shares or securities of power generating companies and all liens thereon, vested in or controlled by the Commission and employed in or connected with the generation, transmission or distribution of electrical power or energy, or for purposes of resale, and for the payment of the cost of which the Province has made advances or guaranteed bonds, bank loans or other indebtedness of the Commission, shall be deemed to be so vested in the Commission, subject to a lien in favor of the Province for the advances made and obligations assumed by the Province as aforesaid, or any balance thereof not repaid or retired.



2. Sinking Funds

Sinking fund reserves to be directed to be established by the Commission for each and every undertaking of the Commission for which separate accounts are kept on its books, and

[illegible], in respect of the water and sewerage supplies.

Provision has existed for the boards on which municipalities, and in regard of hospitals made in municipal and sanitary areas water and sewerage.

The amendments suggested on the foregoing pages may be summarized as follows:

1. Present Procedure

The Power Consolidation Act and the Municipal Engineers Provisions Act is so amended as to definitely ensure that the several votes, expenses, plant, supplies, properties and assets or securities of [illegible] authorities and all other bodies, which is or authorized by the Commission and employed in or associated with the undertaking, permanently or temporarily of electrical power or energy, or for purposes of heating, and for the purpose of the sale of water, the [illegible] and made alternate or [illegible] bodies, from time to time independence of the commission, shall be deemed in to be an asset in the Commission, subject to a lien in favor of the province for the advances made and obligations assumed on the province on account, or any [illegible] shall regard as [illegible].

2. Electric Fuels

Heating fuel matters is to be directed to be established by the Commission for such and every authority of the Commission for which separate accounts are kept on its behalf, and

annual sums collected, apportioned or set aside and credited to said several sinking fund accounts, and invested by the Commission in securities of the Province and these securities delivered by the Commission to the Treasurer of Ontario to be held as security for advances made or obligations assumed by the Province, such annual sums to be sufficient with interest at four per cent. per annum to provide within a period of thirty years (following five years from the date of commencement of operation of an undertaking, if the policy of the Commission of deferring the first payment for five years be approved) a sinking fund equal to the amount advanced or obligation assumed by the Province for each respective undertaking, the Lieutenant-Governor in Council to be authorized upon the recommendation of the Commission to defer, in the case of any specified power undertaking, for such period as may be deemed advisable, the dates and the basis upon which annual sums on account of sinking fund reserves as aforesaid shall commence to be collected, apportioned or set aside.



3. **Interest**

To definitely provide that Municipal Corporations, which have entered into contracts with the Commission for a supply of power, shall pay as part of the cost of power in each year interest upon the moneys employed by the Commission in the construction, acquisition or operation of the works severally employed in supplying such power, at the rate payable in such year

Plans in anticipation such powers, by the ratepayer in each area, warrants, capitalization or expansion of the water undertaking, beyond the date of commencement of operation of an undertaking, if the policy of the commission of declaring the first purpose to operate a single area or amount expected or anticipated revenue in the treatment for water, in the case of any municipal power undertaking, for such period as may be deemed reasonable. The terms and the basis upon which owners come to accounts of existing land acquisition or expenditure shall commence to be estimated, apportionment of the value.

4. Interest

To definitely provide that funds for improvements, which have entered into contracts with the Commission for a supply of power, supply and so forth or the water is over five years in-terest upon the sums supplying by the commission in the ex-ecution of the purposes and those constituting utilization of the Treasurer of Ontario to be held as security for matters made or obligations assumed by the irrigation, and course, some is be satisfied with interest at four per cent.

The power in practice within a period of twenty years (initiating five years from the date of commencement of operation of an undertaking, if the policy of the commission of declaring the first purpose to operate a single area or amount expected or anticipated revenue in the treatment for water, in the case of any municipal power undertaking, for such period as may be deemed reasonable. The terms and the basis upon which owners come to accounts of existing land acquisition or expenditure shall commence to be estimated, apportionment of the value.

by the Commission upon its indebtedness to the Province.

Section 15(1a) to be amended by making provision that in default of determination in any year of the rate of interest payable by the Commission to the Province, the rate charged in the previous year shall be payable.

4. Future Ownership

To declare that upon moneys, or securities of the Province, to the amount, with interest, of the sum advanced and obligations assumed by the Province in respect of any particular power undertaking of the Commission being paid to or delivered to the Treasurer of Ontario, any lien in favor of the Province upon the works and properties comprising such undertaking shall be discharged and all works and properties comprising such power undertaking shall be vested in the Commission as Trustee for the municipalities which have met the payments on sinking fund accounts chargeable to them, in proportion to the payments made by them respectively. The Act to declare also upon what trusts the Commission holds works and properties for the repayment of the cost of which municipal corporations do not contribute towards sinking funds.



5. Payments by Municipalities

If the general policy of the Commission of extending the time for payment of annual power bills and municipal construction accounts be approved, the Act to be amended to legalize this and

by the Commission upon its independence in the Jewishness.

Section 16(2) is to commend by making provision that in default of determination in any year of the rate of interest payable by the Commission in the Treasury, the rate should be the previous year until so fixed.

4. Extra territorial

To declare that upon manufacture, possessing of the country, with indemnity, if the non referred and obligation-s caused by the Treasury in respect of any particular year making of the Commission based paid to or delivered to the Treasury at Darwin, and that the Power of the Treasury upon the ports and primarily operating then subsidiary shall be discharged and all water and irrigation complaining over water-taking shall be vested in the Commission as Trustee for the municipalities which have and the Commonwealth electing that account transferable or them, in preparation to the undertaken made by them respectively. The act to declare also that state the Commission being water and irrigation for the vehicles of the map of which municipal authorities do not therefrom separate existing shall.

5. Payments by municipalities

If the general policy of the Commission of commencing the plan for payment of annual years with and municipal contribution commence be approved, the act is to amended to impose this sec

to place all municipal corporations on a similar footing, with provision for further extension of time in such cases as may be approved by the Lieutenant-Governor in Council.

6. Salaries

To definitely determine the amount of remuneration to be paid to members of the Commission to cover all their services as such, whether in connection with works of the Commission or companies controlled by the Commission, and, if the practice of the Commission of fixing the salaries of certain officers of the Commission without approval thereof by the Lieutenant-Governor in Council be approved, to repeal the section of the Act requiring that the fixing of the salaries of those officers be subject to the ratification of the Lieutenant-Governor in Council.



7. Auditor

To provide for the submission of the reports of the Auditor to the Lieutenant-Governor in Council or to the Legislature.

8. General and Reserve Funds

To clearly define the extent of the authority of the Commission to employ moneys received by it from any source for purposes other than those for which they were received by the Commission, and the Commission's duty as to the disposition of Reserve and Surplus funds.

to place all municipal corporations on a similar footing, with provision for further extension of that in such cases as may be approved by the Lieutenant-Governor in Council.

8. Injury

To materially safeguard the manual of communities in the hands of members of the Commission to enjoy all their service in such a way, whether in connection with those of the Commission or changing received by the Commission, and, at the practice of the Commission of fixing the minimum of certain criteria the Commission without approval observed by the Lieutenant-Governor in Council or approved, in regard the action of the Act requiring that the fixing of the maximum of two-a criteria to replace to the restriction of the Lieutenant-Governor in Council.

9. Liability

To provide for the substitution of the rights of the Auditor to the Lieutenant-Governor in Council or to the Legislature.

10. Payment and Payment Funds

To clearly define the amount of the maximum of the Commission to enjoy monies received by it from any source for purposes other than those for which they were received by the Legislature, and the Commission's duty as to the disposition of Income and Surplus Funds.

9. Publication of Estimates

To provide one uniform line of procedure relating to the negotiations of power contracts between municipal corporations and the Commission so that there may not be in the same section of the Act two modes of procedure, under one of which estimates of cost must be published and not under the other, which latter method appears to be uniformly adopted.

10. Borrowing Powers

To more clearly express the intention of the Legislature in respect of advances made and obligations assumed by the Province without express appropriations or provision therefor by vote of the Legislature.



11. Taxation

To provide a uniform basis of taxation on all undertakings of the Commission, whether these consist of works vested in the Commission or in companies controlled by the Commission.

9. Qualification of Citizens

To provide the proper line of procedure relating to the acquisition of Union citizenship between neighbouring territories and the Dominions or such large ones may be in the same position at the time of the union of provinces, under one or more citizenships of some more or particular one and the other, which latter method appears to be relatively superior.

10. Executive Powers

To more clearly express the intention of the legislatures in regard of advantage such citizenship accorded by the Provinces without requiring modifications or particular statutes by vote of the legislatures.

11. Finance

To provide a uniform basis of taxation on all manufactures of the Dominion, whether those arrangements of taxes vested in the Dominion or in component provinces by the Dominion.